Zambia

Justice Sector and the Rule of Law

A review by AfriMAP
and the
Open Society Initiative for Southern Africa

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<tr>
<td>ACC</td>
<td>Anti-Corruption Commission</td>
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>AfriMAP</td>
<td>Africa Governance Monitoring and Advocacy Project</td>
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<td>ARS</td>
<td>AIDS and Rights Alliance</td>
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<td>ART</td>
<td>anti-retroviral therapy</td>
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<tr>
<td>AtoJP</td>
<td>Access to Justice Program</td>
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<tr>
<td>CAT</td>
<td>Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<tr>
<td>CCJP</td>
<td>Catholic Commission for Justice and Peace</td>
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<td>CCPs</td>
<td>Citizens Crime Prevention Units</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discriminations against Women</td>
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<tr>
<td>CERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>CID</td>
<td>Crimes Investigations Department</td>
</tr>
<tr>
<td>CMW</td>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families</td>
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<td>COP</td>
<td>Citizen on Patrol</td>
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<td>CPI</td>
<td>Corruption Perception Index</td>
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<td>CPs</td>
<td>Cooperating Partners</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CSO</td>
<td>Central Statistical Office</td>
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<td>CSU</td>
<td>Community Safety Unit</td>
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<tr>
<td>DANIDA</td>
<td>Danish International Development Agency</td>
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<tr>
<td>DEC</td>
<td>Drug Enforcement Commission</td>
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<tr>
<td>DFID</td>
<td>Department for International Development</td>
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<td>DKK</td>
<td>Danish Kroner</td>
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<tr>
<td>DNRPC</td>
<td>Department for National Registration, Passports and Citizenship</td>
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<td>DPP</td>
<td>Director of Public Prosecutions</td>
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<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<td>ECZ</td>
<td>Electoral Commission of Zambia</td>
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<td>EDF</td>
<td>European Development Fund</td>
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<td>EMD</td>
<td>Economic Management Department</td>
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<td>ETC</td>
<td>Department of Economic and Technical Cooperation</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUR</td>
<td>Euro</td>
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<tr>
<td>FNDP</td>
<td>Fifth National Development Plan</td>
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<td>GS</td>
<td>Governance Secretariat</td>
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<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>GSAG</td>
<td>Governance Sector Advisory Group</td>
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<tr>
<td>GTZ</td>
<td>German Technical Cooperation (Gesellschaft Technische Zusammenarbeit)</td>
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<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<td>HRC</td>
<td>Human Rights Commission</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICJ</td>
<td>International Commission of Jurists</td>
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<td>IPU</td>
<td>Intellectual Property Unit</td>
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<td>IRC</td>
<td>Industrial Relations Court</td>
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<td>IT</td>
<td>Information Technology</td>
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<td>JASZ</td>
<td>Joint Assistance Strategy for Zambia</td>
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<td>KPIs</td>
<td>Key Performance Indicators</td>
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<td>LAZ</td>
<td>Law Association of Zambia</td>
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<tr>
<td>LPF</td>
<td>Liberal Progressive Front (political party)</td>
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<tr>
<td>MMD</td>
<td>Movement for Multi-party Democracy (political party)</td>
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<tr>
<td>MoFNP</td>
<td>Ministry of Finance and National Planning</td>
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<td>MoHA</td>
<td>Ministry of Home Affairs</td>
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<td>MoJ</td>
<td>Ministry of Justice</td>
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<td>MTEF</td>
<td>Medium Term Expenditure Framework</td>
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<tr>
<td>NACP</td>
<td>National Anti-Corruption Policy</td>
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<tr>
<td>NCBPGGZ</td>
<td>National Capacity Building Program for Good Governance in Zambia</td>
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<td>NGBS</td>
<td>National Government Baseline Survey</td>
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<tr>
<td>NGO</td>
<td>non-governmental organisation</td>
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<tr>
<td>NPA</td>
<td>National Prosecution Authority</td>
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<tr>
<td>NWAs</td>
<td>Neighbourhood Watch Associations</td>
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<td>OSISA</td>
<td>Open Society Initiative for Southern Africa</td>
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<tr>
<td>PEMD</td>
<td>Planning and Economic Management Division</td>
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<tr>
<td>PF</td>
<td>Patriotic Front (political party)</td>
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<td>PFF</td>
<td>Prisoners’ Future Foundation</td>
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<tr>
<td>PFZ</td>
<td>Prison Fellowship of Zambia</td>
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<tr>
<td>PPCA</td>
<td>Police Public Complaints Authority</td>
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<tr>
<td>PPMLA</td>
<td>Prevention of Money Laundering Act</td>
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<tr>
<td>PRISCCA</td>
<td>Prisons Care and Counselling Association</td>
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<tr>
<td>PSRPSC</td>
<td>Public Sector Reform Program Steering Committee</td>
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<tr>
<td>RDE</td>
<td>Royal Danish Embassy</td>
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<tr>
<td>SC</td>
<td>Senior Counsel</td>
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<td>SCZ</td>
<td>Supreme Court of Zambia</td>
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<td>SIs</td>
<td>statutory instruments</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>SNDP</td>
<td>Sixth National Development Plan</td>
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<td>SOG</td>
<td>State of Governance Report</td>
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<tr>
<td>TB</td>
<td>tuberculosis</td>
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<tr>
<td>TC</td>
<td>Technical Committee</td>
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<tr>
<td>TNNDP</td>
<td>Transitional National Development Plan</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCITRAL</td>
<td>United Nations Commission of International Trade Law</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organisation</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<tr>
<td>UNIP</td>
<td>United National Independence Party (political party)</td>
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<td>UNZA</td>
<td>University of Zambia</td>
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<tr>
<td>US</td>
<td>United States</td>
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<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>USD</td>
<td>United States Dollar</td>
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<tr>
<td>VSU</td>
<td>Victim Support Unit</td>
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<tr>
<td>WLSA-Zambia</td>
<td>Women and Law in Southern Africa Research and Educational Trust–Zambia</td>
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<tr>
<td>YWCA</td>
<td>Young Women’s Christian Association</td>
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<tr>
<td>ZAA</td>
<td>Zambia Association of Arbitrators</td>
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<td>ZAFOD</td>
<td>Zambia Federation of the Disabled</td>
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<td>ZAMTROP</td>
<td>Zambia Trans Overseas for the Office of President</td>
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<td>ZANACO</td>
<td>Zambia National Commercial Bank</td>
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<tr>
<td>ZCDR</td>
<td>Zambia Centre for Dispute Resolution</td>
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<tr>
<td>ZDAD</td>
<td>Zambia Development Assistance Database</td>
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<td>ZDC</td>
<td>Zambia Democratic Congress (political party)</td>
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<td>ZIALE</td>
<td>Zambia Institute of Advanced Legal Education</td>
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<td>ZLDC</td>
<td>Zambia Law Development Commission</td>
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<tr>
<td>ZMK</td>
<td>Zambian Kwacha</td>
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<td>ZP</td>
<td>Zambia Police Force</td>
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<tr>
<td>ZPS</td>
<td>Zambia Prisons Service</td>
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<td>ZSIS</td>
<td>Zambia Security Intelligence Service</td>
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Foreword

This report assesses Zambia’s justice sector with a view to pointing out ways in which it promotes the attainment of the rule of law ideal. It is carried out in the context of growing interest in issues of good governance, democracy, human rights and the rule of law in African countries, and has been prepared for the Open Society Initiative for Southern Africa (OSISA) and the Open Society Foundations’ Africa Governance, Monitoring and Advocacy Project (AfriMAP).

Established in 2004 by the African foundations of the Open Society Foundations, AfriMAP has been monitoring the compliance of African states with the new commitments undertaken by the African Union since 2000 in the field of good governance, democracy, human rights and the rule of law. The report evaluates Zambia’s respect for international standards in relation to the justice sector and the rule of law.

The overall objective of the report is to assess the efficacy, accountability, responsiveness and legitimacy of the justice sector in Zambia and suggest policy and legislative interventions. In particular, the report:

• Assesses whether, and the extent to which, Zambia is in compliance with its international human rights obligations, including the extent of the incorporation of international human rights standards into national law;
• Reviews the historical evolution of the justice sector;
• Reviews the practice of constitutionalism and the rule of law in Zambia, with a view to identifying shortcomings and suggesting possible solutions;
• Reviews the efficacy, accountability and responsiveness of the administrative/institutional framework for the administration of justice;
• Assesses the adequacy of established frameworks in facilitating the independence, efficacy and accountability of the justice sector;
• Assesses the technical capacity of actors in the justice sector;
• Reviews the effectiveness, accessibility and accountability of the criminal justice system;
• Establishes whether, and the extent to which, Zambians have access to justice (physical, financial, normative and procedural);
• Reviews the role of development partners in the justice sector; and
• Suggests policy and legal interventions that would enhance the efficacy, accountability, responsiveness and legitimacy of the justice sector.
Acknowledgements

The study on the justice sector and the rule of law in Zambia would not have been possible without the contributions of a cross-section of stakeholders, who are as diverse as they were invaluable. The preparations of the study included academics, members of civil society organisations and faith-based institutions, state actors working in the judicial sector, and the donor community. The endorsement of this study, by the aforementioned participants, demonstrates the commitment shown by the citizens of Zambia to ensuring that the hallmark of ownership is registered in this unique study on access to justice and the adherence and respect for the rule of law in Zambia.

The report was produced in partnership with the Law Association of Zambia (LAZ), a non-governmental organisation, whose members we would like to thank for their dedication and hard work in ensuring that this study was successfully validated and launched. A special note of appreciation goes to a team of individuals who also worked on the study; special mention goes to Fidelis Kanyongolo, who showed tremendous leadership and dedication as editor of the report.

We would like to place on record our sincere appreciation to the author of the study, Joyce Shezongo-Macmillan, who diligently observed the AfriMAP standards and guidelines, and thus ensured the relevance, quality, integrity and credibility of the report.

As Zambia aims to deepen democracy and promote the rule of law, we sincerely hope that this new study will contribute to the debate, with the aim of consolidating the gains and results registered, identifying the challenges, and adopting the recommendations proposed in order to facilitate a stronger collective will that continues to strive for improvement in the democratic dispensation generally, but particularly in upholding the frameworks and principles of the rule of law, equality and justice, for all.
Part I

Zambia: Justice Sector and the Rule of Law

Discussion Paper
Introduction

The study was commissioned by the Open Society Initiative for Southern Africa (OSISA) and the Open Society Foundation’s Africa Governance Monitoring and Advocacy Project (AfriMAP) in August 2011. The main report is an in-depth study based on a structured questionnaire that generated information from both state and non-state actors. The aim of the study was to produce a comprehensive, high-quality, informative and analytical report that will further the work of AfriMAP and contribute to the build up of a substantial data base of information across African countries.

In so doing AfriMAP hopes to undertake an audit of African governments’ compliance with African and international standards on human rights and good governance, including the commitments made at national level. The report is intended as a resource for human rights activists in the countries concerned and for those working in other African countries, to push the frontiers for respect of human rights and democratic values in Africa.

This discussion paper is based on the main findings and recommendations of the comprehensive report on the justice sector and rule of law in Zambia. It is developed as an advocacy tool and as such includes advocacy issues that are not part of the main report. These are intended to help various actors to think around what can be done to improve the justice sector in the country. As such, the recommendations are not exhaustive and remain open to debate. The recommendations were proposed by the persons interviewed for the study, stakeholders at a validation workshop and include those thought of by the reporter. The recommendations are not in any order of priority.

1. Legal and institutional framework

Domestication and application of international instruments

Zambia has a two-tier dualistic legal system in which international law is seen separate from domestic law. At domestic level, the statutory law or general law system is conceptually superior to and separate from the parallel traditional customary law system. Zambia has ratified all seven key international human rights instruments. The country has also ratified the treaties of the African regional human rights system. However, with the exception of the 1st Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the country has not ratified the optional protocols to the other human rights treaties.
As is the case with other African countries, the law does not provide for the automatic application of ratified international instruments at national level. There are no guidelines on the domestication of international instruments and this has on occasion taken place at the behest of treaty committees in recommendations made following Zambia state party reports. The absence of a clear legal obligation to domesticate international instruments to which Zambia is a party and the lack of relevant guidelines has contributed to an unsystematic approach to domestication. It also impedes the ability of citizens and others to use the law to compel the government to meet its international obligations, including those recommendations of international treaty bodies. Thus, for example, recommendations made in 2001 by the United Nations (UN) Committee against Torture proposing the criminalisation of torture and removal of the mandatory death sentence in certain cases of aggravated robbery have not been implemented and the relevant international norms have not been domesticated.

There is a need for advocacy initiatives to ensure that the Constitution is amended to include a provision that obliges the executive to domesticate international human rights treaties which Zambia ratifies and to provide for the enactment of guidelines. The current ad hoc and unsystematic approach to domestication of international instruments makes it difficult to determine the extent of international obligations that have been domesticated. There has been a number of mapping exercises and audits aimed at identifying the specific international obligations that have been domesticated. These include, the mapping for the domestication of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) which was undertaken by the then Gender Division of Cabinet Office; and the mapping for the Convention on the Rights of the Child (CRC) which was undertaken by the Governance Secretariat. The results of the mapping exercises are neither integrated in a single report nor available in one depository, making it difficult to have an overview of the extent of domestication in general.

It is recommended that the Human Rights Commission (HRC) should undertake a comprehensive mapping exercise to ascertain the extent of domestication of the international and regional human rights instruments. The HRC should be the key custodian of this information that should be accessible to all interested parties, by posting it on a constantly updated website. The mapping exercise by the HRC will provide a model for comprehensive mapping of domestication of other treaties, especially those that relate to the rule of law and administration of justice.

Uncertainties in the state of domestication of international instruments to which Zambia is a party contribute to the inability or unwillingness of legal practitioners in Zambia to cite international instruments in their submissions to the courts in matters under litigation. Similarly, courts rarely refer to international instruments in their judgments. Used only rarely by lawyers and judges, international instruments are rendered virtually superfluous. As the judges are appointed from amongst the legal practitioners, the attitudes towards international instruments are transferred to the Bench from the Bar.

It is imperative that lawyers need to be encouraged to cite provisions in international human rights instruments in their submissions to courts in relevant cases. This will compel courts to begin to make reference to the instruments and, thereby, contribute to the infusion of
international standards in Zambian jurisprudence. There is also a need to institute a deliberate training programme for lawyers and judicial officers in the state’s international treaty obligations and the application of international human rights instruments in domestic courts. This should be made a compulsory course in the training curricula of lawyers.

As for economic, social and cultural rights, which at national level are not part of the Bill of Rights and cannot be enforced, intensified advocacy needs to be undertaken. The Mvunga and Mwanakatwe Constitutional Review Commissions addressed this subject and appreciated the important role economic, social and cultural rights can play in the realisation of political and civil rights. However, both commissions felt that these rights could not be made justiciable because of the formidable constraints in their realisation. It is for this reason that under the current Constitution (1996), economic, social and cultural rights are relegated to the chapter dealing with directive principles of state policy and remain non-justiciable.

However, the most recent Constitutional Review Commission (Mung’omba Commission) disagreed with this reasoning, stating that:

- protection of any right has a cost, and the country should be prepared to spend resources in order to guarantee its citizens a minimum of economic, social and cultural rights. The fact that a country is poor does not constitute a legitimate excuse for it to avoid striving to ensure that its citizens enjoy economic, social and cultural rights such as the right to adequate food, education and healthcare.

The ongoing Constitutional Review process presents an opportunity for lobbying for the inclusion of this class of rights in the Bill of Rights. What should be clear is that the rights are supposed to be progressively realised. This means the government can include the progressive realisation in the national development plans.

**Constitutional and law reform**

The importance of law reform cannot be overemphasized. It contributes to shaping democracies to meet the changing needs of society. It is important for ensuring conformity of subsidiary legislation to constitutionally prescribed standards as well as human rights. In Zambia the process of generating legislation does not begin in Parliament, except in circumstances provided for in the Rules of Procedure of the National Assembly. Almost invariably, the process is initiated by government line ministries or the Zambia Law Development Commission (ZLDC). The ZLDC receives instructions from line ministries or other sources. It has the comparative advantage of undertaking research and wide consultation so that the recommendations reflect the aspirations of the people.

With respect to Parliament, the ZLDC is restricted to soliciting contributions from Members of Parliament and providing a platform for them to input into its processes. There is a need to rethink this approach so that there is a clear and efficient division of labour between Parliament and the ZLDC with respect to the legislative process. It is also worth noting that the ZLDC submits its recommendations to the Minister of Justice, the client ministry and not Parliament. When the ZLDC makes its recommendations, its obligation is discharged and the law reform
process then becomes government business. The law neither requires the Minister of Justice nor the client ministry to publish the ZLDC final reports nor to refer any principal legislation proposed by the ZLDC to Cabinet for consideration. The recommendations can, thus, very easily be forgotten or ignored, especially where they appear to threaten the position of the political party in government.

The ZLDC is further not mandated to perform advocacy functions that institutions such as the Law Association of Zambia (LAZ) are authorised to undertake. The processes, through which Bills are subjected, however, provide room for advocacy by other interested parties which are permitted to lobby individual Members of Parliament directly. Given that the LAZ is not prohibited from advocacy for law reform and that it is a credible association of members well-versed in the law, it should continue to contribute to law reform. This is consistent with the association’s objectives, which are to:

- Further the development of law as an instrument of social order and social justice and as an essential element in the growth of society;
- Provide a means by which all lawyers, whatever their particular field of activity, can participate together fully and effectively in the development of society and its institutions; and
- Promote research in the development of the law in general and particularly in relation to:
  - The applicability and suitability of received law;
  - The character and content of customary law; and
  - Promoting the reform of the law, both by the amendment of and the removal of imperfections in existing law, and by the reformulation, codification or restatement of particular branches of the law.

The LAZ, which also has a Law Review Committee, should work closely with the ZLDC not only in contributing to all law reform processes in general, but also to advocate for implementation of any recommendations made by the ZLDC in particular. Through its advocacy efforts, the LAZ can play a cardinal role in law reform initiatives, the most far-reaching of which is the constitution-making process.

2. Government respect for the rule of law

Abuse of state machinery
The rule of law envisages that everyone is subject to the discipline and sanctity of the law. This means that executive decisions and legislative enactments which fall outside the framework of the rule of law must be declared invalid. One of the most significant ways in which holders of executive and legislative power may undermine the rule of law is by amending legal limits on power where they prove to be politically inconvenient. The best example of this was the well-funded scheme aimed at influencing public opinion to amend both the Movement for Multi-party Democracy (MMD) and Republican Constitution to pave way for a third term for former President Frederick Chiluba.
As it happened, the campaign failed due to a well-organised opposition initiative by civil society, known as the ‘green ribbon’ campaign. This was supported by labour and students’ unions as well as the women’s movement. Independent media also contributed by running commentaries and editorials against the third term attempt. The green ribbon campaign got a further boost from 21 Members of Parliament who included Cabinet ministers as well as the Republican Vice-President who publicly opposed the third term bid. The general public was not left behind as it was agreed that every day at 5pm all motorists would blow the horns of their vehicles while non-motorists had acquired whistles which they blew at the same hour.

Evident during these events was that one of the problems that have plagued the country throughout its history is that of abuse of state agents by the party in government. While this was the order of the day during the first postcolonial regime when the country saw the politicisation of the Police Force that almost reduced the country into a police state; Zambians expected that this would cease with the new wave of democratisation. On the contrary, during the ‘third term’ conflict, the police made it difficult for ‘green ribbon’ campaigners to organise public rallies and meetings. Often, public rallies were disrupted and stopped by the police on flimsy grounds, while supporters of the MMD’s proposal for the presidential third term were not only allowed to hold their meetings unhindered, but were also provided with police protection. This was an abuse of the police as state agents and undermined the rule of law, especially its prescription of equality under the law. In the same vein, public media were used to discredit the green ribbon campaign by portraying them as a bad influence on the population and a group whose views were not to be entertained.

Despite the abuse of state institutions to the disadvantage of opponents of the agenda of the party in government, the green ribbon’s advocacy campaign successfully blocked the attempt to circumvent the spirit of the constitutional limits on presidential terms. The green ribbon campaign birthed the Oasis Forum – a consortium of civil society organisations, including the LAZ, which at the time of writing was engaged in an advocacy campaign for a people-centred Constitution for Zambia. It is proposed that such broad-based civil society campaigns be marshalled and coordinated in defence of the rule of law against threats arising especially from abuses of the state machinery. It is also important that in such advocacy campaigns, the potential of the media to facilitate such campaigns or, in the case of state broadcasters, to undermine them, should not be underestimated.

**Executive violation of the law and perception of the judiciary**

The Constitution provides for an independent judiciary and many cases can be cited where the judiciary has adjudged against executive violation of the law. However, the effectiveness of the judiciary in performing this task is diminished if the judiciary places itself in situations in which it is likely to be biased in favour of the executive. A case in point is the occasion in the recent past when it was revealed that the head of the judiciary was financially indebted to the head of the executive branch. Reportedly, former Chief Justice Ngulube had obtained from former President of Zambia a total amount of USD 168 000 over a period of three years.

Subsequently, the Registrar of the High Court announced that the Chief Justice would go on immediate leave pending retirement. The independent press ran stories deriding Chief
Justice Ngulube and demanding for an outright resignation and forfeiture of the benefits of his retirement package. The onslaught was joined by First Republican President, Kenneth Kaunda. Chief Justice Ngulube finally resigned in August 2002. This did not lay the matter to rest as Chief Justice Ngulube was requested to pay tax on the moneys received, a demand he rejected. The Zambia Revenue Authority’s Revenue Tribunal decided that the receipts of these funds by Chief Justice Ngulube were not connected to his job as Chief Justice and that though the money had come to Chief Justice Ngulube through an account held by the government intelligence agency, ZAMTROP (Zambia Trans Overseas for the Office of President), it was not government money.

The events described above led to the perception of the judiciary as an institution that had sold itself to the executive. Regardless of its exaggeration of the scale of the problem, this perception had a significant negative impact on public confidence in the judiciary’s capacity and willingness to restrain and punish executive violations of the law. This negative public perception of the judiciary was later reinforced by the refusal of the courts to register a judgment passed by a London court against former President Chiluba for the theft of USD 45 million of public funds; the acquittal of former President Chiluba and his wife Regina of criminal charges; as well as a judgement ordering the return of property purchased by Tedworth Properties, a company registered by the former President in Panama. It is recommended that the judiciary must make a deliberate effort to rebuild public confidence in its independence from the interests of the executive or any other person or institutions. Actual and ostensible independence are essential if the judiciary is to be perceived to be an effective guardian of the law against violations by the executive.

Amnesties and pardons
Under Article 44 of the Constitution the President can exercise the prerogative of mercy and pardon any convicts on the advice of the Advisory Committee on the prerogative of mercy. Petitioners to the Mun’gomba Constitution Review Commission argued that this power is too wide and open to abuse. They proposed that it should be restricted to certain offences such as treason and should also not be vested in the President but an independent committee. The Mun’gomba Constitution Review Commission noted that by convention and practice in Commonwealth countries, the power of the prerogative of mercy is vested in the head of state. Further, the Commission found no compelling reason for the Constitution to vest the power of prerogative of mercy in a body other than the President, as the trial of all offences and the determination of guilt is the preserve of the courts. It is however recommended that the law should not restrict the offences to which the prerogative of mercy should apply.

3. Management of the justice system
Planning and coordination for the justice sector
The national Access to Justice Programme (AtoJP) was declared to be one of the priority areas in the governance chapter of the Fifth National Development Plan 2006–2010 and has remained
a priority theme in the Sixth National Development Plan 2011–2015. Among other things, the programme recognised the importance of the role of civil society as a facilitator, catalyst and advocate for transparent and accountable procedures in the justice system at national and decentralised level. In addition, it sought to increase the capacity for dialogue between formal justice sector institutions, representing the supply side of service delivery, and civil society organisations, representing the demand side.

In order to enhance the institutional sustainability of the programme beyond the lifespan of donor funding, there is a need to align the specific outputs of the programme with particular beneficiary institutions depending on the mandate of each institution. In this way, each institution will take the implementation responsibility for the specific outputs to which it is aligned. There is also a need to progressively mainstream the programme into the government’s overall development policy framework. The alignment of outputs to beneficiaries and the mainstreaming of access to justice into overall government policy must be underpinned by synchronising donor funding for access to justice with the government’s general budget. Budgeting should be undertaken annually based on an annual work plans submitted by each institution and the overall budget should be included in the Yellow Book with indicative ceilings.

**Court administration**

The Judicature Administration Act falls short of facilitating judicial autonomy to the extent stipulated by the Constitution. Section 4 of the Act confers on the Judicial Service Commission the authority to appoint administrative staff of the judiciary. These include the registrar, deputy registrar, assistant registrar, magistrates and other judicial officers who perform both administrative and judicial functions. The members of the Judicial Service Commission include the Attorney-General who is an *ex-officio* member of Cabinet. It goes without saying that the Attorney-General, who is also government’s chief legal advisor in the discharge of its day-to-day functions, is more aligned to and operates under the executive. Further, although the Judicature Administration Act gives the Commission broad regulatory authority, section 5(1) of the Act requires that these be exercised with approval of the President. This is with specific reference to powers to dismiss, mete out disciplinary action or terminate appointments of any officers appointed by the Judicial Service Commission. In addition, section 5 of the Service Commissions Act provides that the President may give the Commission ‘such general directions as the President may consider necessary, and the Commission ... shall comply with such direction’. These provisions make the Commission subservient to the Presidency and compromise judicial autonomy. It is recommended that the exercise of both the judicial and administrative functions the judiciary should be subject only to the Constitution and not to the control or direction of any person or authority. The Judicature Administration Act and the Service Commissions Act therefore should be amended to ensure this. The performance of the Judicial Service Commission’s authority without interference from the Presidency will enhance judicial autonomy.

**Record-keeping and information**

The current state of record-keeping in the justice sector is unsatisfactory due to a number of factors, including the lack of computerisation of records. This makes it difficult to ensure the
security of records and produces inefficiencies in their retrieval. This situation is conducive to corrupt interference with records by staff that are responsible for maintaining records. Record-keeping systems within justice sector institutions must be computerised as a matter of urgency and as a first step towards establishing efficient and secure maintenance of records across the sector. The initiative taken by the judiciary in this regard is a model that should be emulated. Computerisation of records must be complemented by the relevant training. This has become evident with respect to the initiative undertaken by the judiciary where there remains the need for continuous training of legal practitioners in the use of the system. It is recommended that funding for appropriate training programmes in information communication technology for records staff in all justice sector institutions should be budgeted for and sourced expeditiously.

Another challenge that affects information management in the justice sector is limited access to primary legal materials such as statutes and law reports. For example, while the complete volume of the laws of Zambia is available at all courts and other justice institutions, not all the amendments are available as there is no systematic and deliberate programme for their distribution. In respect of courts, this means, for example, that magistrates, especially in remote rural areas, apply outdated laws. The same may apply to public prosecutors, especially in the subordinate courts, who may also frame indictments based on repealed laws.

There is also a dearth of other literature that court staff especially lawyers, judges and magistrates need to refer to in litigation and adjudication. This may account for many poorly researched and reasoned judgments in the courts. A perusal of judgments of the High Court shows the tendency of judges to dwell on recounting evidence but be very brief or give vague explanations of how the verdict or decision is anchored in legal logic informed by legal literature. The sketchy application of legal logic may account for the high number of appeals to the Supreme Court which, in turn, cause congestion in that court. There is a need to improve the access to up to date primary and secondary legal information for judicial officials. This should be complemented by the establishment of a research department of the High Court and Supreme Court. This will aid adjudicators to arrive at well-researched judgments in terms of the law and precedents.

4. Judges, lawyers and prosecutors

Independence and impartiality of the judiciary

The issue of appointment of judges is intricately linked to the fundamental principle of independence and impartiality of the judiciary. The rationale for this principle is that judges should not feel inhibited in arriving at just and fair judgments. However, this must not be used as cover for incompetence, prejudice and abuse of judicial authority. The finality of the Supreme Court, for example, does not mean that the court is at liberty to arrive at any decision, simply because such decision cannot be overturned; the litigant is entitled to a fair hearing and an impartial well-reasoned judgment, even at this final level. This would amount to mischief by the high bench. None of this finds expression in the letter of the law or the Constitution and suggests that the courts are a law unto themselves. It is therefore imperative that the Constitution should state the duty of the court to all litigants. The duty of the judiciary to ensure the right of
litigants to a fair hearing and an impartial well-reasoned judgment, and thereby justice, should be guaranteed by the Constitution in unequivocal terms.

**Public prosecutors**

In 2010, the National Prosecution Authority Act (No. 34 of 2010) was enacted, bringing to a close a discussion on the draft national prosecutions policy that had started in 2002. The Act establishes a National Prosecutions Authority as the authority responsible for public prosecutions. Although section 10 of the Act gives power to the Director of Public Prosecutions (DPP), who is the head of the authority, to appoint a person as a prosecutor for purposes of this Act and the Criminal Procedure Code, it makes no mention of how the DPP will supervise the prosecutors in the employ of the Ministry of Home Affairs (MoHA). Prosecutorial functions are also undertaken by police officers in the Prosecutions Unit of the Zambia Police Force under the MoHA; prosecutors at the Anti-Corruption Commission and Drug Enforcement Commission. These institutions are not under the direct control of the National Prosecution Authority or the DPP. It is recommended that the National Prosecution Authority Act be amended to include a provision that expressly empower the DPP to supervise and oversee all prosecutorial functions of all public institutions.

In 2010, the Deputy Chief Justice observed that there was a problem in the issuance of certificates for summary trial through the office of the DPP and that this could be curbed if there was close cooperation between the police and the office of the DPP. She was also reported as having stated that the delays in the issuance of the certificates for summary trial were caused by the shoddy investigations on the part of the police. Further, there was a pronouncement by the Republican President to establish offices of the District Attorney so as to decentralise public prosecutions. It is still unclear when these will be put into operation. There is a need for all sections of the legal sector to participate fully in any future reforms of the prosecutorial service and guard against reforms that will disadvantage the justice sector in Zambia.

**Training of legal practitioners**

Due to the extreme scarcity of legal practitioners, most criminal defendants go without representation and most claimants in civil matters cannot access legal aid. The scarcity of lawyers is mainly due to the fact that too few law graduates qualify to practice law by passing the examinations set by Zambia’s only postgraduate legal academy, the Zambia Institute of Advanced Legal Education (ZIALE). The failure rates at ZIALE have raised questions that need urgent answers. Issues that need to be critically examined include:

- The level of preparedness of law graduates admitted to ZIALE for the legal practitioners’ qualifying examination;
- The quality of the instructors;
- The appropriateness of the mode of instruction;
- The adequacy of the apprenticeship that students undertake during this training period for preparing them for examinations; and
- The role, if any, of protectionism by the legal profession aimed at keeping the numbers of legal practitioners so as to minimise competition.
5. Criminal justice

Collection of crime statistics
There is no central depository for crime statistics in the country. The police are reluctant to release crime statistics to avoid causing public alarm and other agencies dealing with criminal matters collect and keep their own statistics. The Central Statistical Office (CSO), which is present in all the provinces, is said to have the capacity to fulfil most data needs and could serve as the central depository for all crime statistics. Placing the responsibility of maintaining national crime statistics in the CSO will also ensure that the statistics are collected and maintained in accordance with the relevant professional standards, unlike where statistics are maintained by various institutions separately and with no reference to common standards. It is therefore recommended that the CSO be vested with the legal mandate of acting as the national depository for national crime statistics and of ensuring that crime statistics are collected, analysed and maintained in accordance with the relevant technical and professional standards.

The move towards creating a national depository of crime statistics should benefit from the fact that all institutions dealing with criminal matters are members of the Access to Justice Programme (AtoJP). This presents an opportunity for them share statistics through the facilitation of the AtoJP, which, in turn, will be the contact point with the CSO.

Reforms in policing
The police have the mandate of administering the Public Order Act which governs the regulation of public meetings and processions mainly by requiring that any person intending to organise or hold a public meeting or procession must first obtain police permission for the event. When originally enacted, this law was concerned only with prohibiting the wearing of uniforms in connection with political objects and prohibiting quasi-military organisations, the carrying of weapons at public meetings and processions, prohibiting the promotion of hostility between sections of the community and similar matters. This necessitated the provision in the Public Order Act for persons wishing to assemble or hold a public gathering to obtain a police permit. There is no longer the requirement in the Public Order Act to obtain a police permit for any public gathering to take place. What is required is to notify the police within the prescribed period and the police, in turn, should oblige. If they are unable to police the event for reasons stipulated under the Act, they should suggest alternative dates for the public event.

The Public Order Act is necessary to preserve law and order in the country so as to ensure that individuals enjoy their constitutional rights without hindrance. However, its administration is far from satisfactory as the police have failed, refused or neglected to comply with its provisions. Under the Fifth National Development Plan, the government introduced reforms aimed at enhancing professionalism, accountability and respect for human rights in the Police Force. Among the activities implemented to attain this objective were the reorientation and retraining of police officers in community-based policing. There was no similar undertaking in the Sixth National Development plan and the country has seen no continued attempt on the part of the police to follow through with reforms within the Police Force.
This is especially evident with the manner in which the police are administering the Public Order Act, which exhibits police disregard for the law, thereby infringing on the right to freedoms of assembly and association. It is recommended that the police should scale up the reorientation and retraining activities so that the Police Force is equipped with the skills of administering the Act in the proper manner. It is also recommended that the Public Order Act be amended to exempt indoor meetings from the requirement of notification.

**Right to justice**

In effect, the rule of law includes the right to justice which includes the right to be heard, the right to be informed of the nature of the offence with which one is charged, the right of access to courts of law which are fair, impartial and independent, and the right to a well-reasoned and expeditiously delivered judgment. It also includes the right to benefit from one’s judgment through execution. Despite the importance of these rights, they are not explicitly guaranteed by the Constitution. It is recommended that the Constitution be amended to include an express guarantee of these rights. There is also a need for the Constitution and subsidiary legislation to set time limits on the courts and executive agents involved in the administration of justice in order to secure the right to access justice. Incidentally, the right to administrative justice is just as important as the general right to justice in ordinary courts and should therefore also be explicitly enshrined in the Constitution.

**Appropriate remedies and sentencing**

Zambian law retains the death penalty for the offences of treason, murder and aggravated robbery involving use of a firearm. The death penalty was inherited from colonial law. The penalty has been justified by reference to the traditional deterrent and retributive theories of punishment. The arguments behind these theories are that since the death penalty eliminates the offender, it serves as a deterrent to would-be offenders, and also satisfies the natural urge in human beings for revenge. Research in a number of countries such as Britain and some parts of the United States of America and the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) have, however, discounted the value of these arguments. Research in these countries has shown that the death penalty is neither a deterrent nor a civilised way of punishing offenders.

The mandatory imposition of a death sentence for offences that do not produce the death or wounding of any person arguably constitutes a violation of the right to life as provided for in Article 6(2) of the ICCPR. The United Nations (UN) Special Rapporteur on Torture, in the report on the issue of capital punishment and its restrictions, places emphasis on Article 6(2) of the ICCPR which stipulates that in retentionist countries, the ‘sentence of death may be imposed only for the most serious crimes’. The position taken by Zambian law was tested in the case of *The People vs Bernard Lubuto and two others*. The accused had committed a robbery in which no person was killed or wounded but in keeping with the law imposing a mandatory sentence of death for aggravated robbery involving the use of a firearm, the accused was sentenced to death. He filed a complaint with the Human Rights Committee. The Human Rights Committee concluded that considering that in this case the use of the firearm did not produce the death
or wounding of any person and that the court could not under the law of Zambia take these elements into account in imposing sentence, the mandatory imposition of death under the circumstances violated Article 6(2) of the ICCPR.

Exploring the issue of the death penalty, the Mun’gomba Commission was of the view that Zambia has not reached a stage where it can abolish this sentence because it does not have an alternative way of protecting victims of violent crime which can serve as a deterrent to would-be offenders. The Commission feared that abolition of this sentence could trigger an increase in the number of cases of violent crime. The Commission was of the view that the only effective way of protecting society against cases of violent crime, at the moment, is the retention of the death penalty. While the death penalty may be retained, there is a need to rethink it in respect of aggravated robbery where the act does not produce the death or wounding of any person. Even more importantly, it is recommended that the death penalty should not be mandatory as this may result in injustice and violation of the right to life, but also usurps the sentencing discretion of judges.

**Prison conditions**

All prisons in the country are public facilities and there are no prisons that are privately run. A characteristic feature of Zambian prisons is overcrowding. Zambia’s prisons were built to accommodate 5,500 inmates, the prison population has increased over the years to 14,318 in 1998 and 16,500 in 2012. 2009 statistics indicate that the prison population stood at 15,300 inmates. 2005 statistics show that 35% of prison inmates were women. A 2010 survey found that the occupancy rate of prisons in Zambia was 300% in a population of 16,666. It is further reported that the 8th UN Survey on Crime Trends and the Operations of Criminal Justice Systems show that Zambian prisons are among the most overcrowded in the world: out of the 128 countries that participated in the study, Zambia had the sixth-highest occupancy rate.

There is an urgent need to improve prison conditions in Zambia. The government must prioritise the building of more prisons and ensure that such work is undertaken efficiently to avoid situations such as the one in which it has taken about 38 years to complete the construction of the new maximum security prison. There is also a need to speed up the process of upgrading prisons. Government should come up with short- and long-term measures so that operations at prisons run smoothly. Case-flow management also needs be improved. Inmates reportedly stay in prison with their appeals pending for up to 27 years. In addition to infrastructural improvements, the judiciary should also be encouraged to increase the use of non-custodial sentences in appropriate cases in order to reduce the prison population.

### 6. Access to justice

**Limitations to access to justice**

In Zambia, access to justice is limited by several factors. These include low levels of knowledge of rights and the justice system, physical and financial challenges and unreasonable delays in case-handling. Knowledge is a prerequisite to asserting rights yet the levels of awareness of the
mechanisms of justice available and rights are low among the members of the general public. The majority of Zambians live in rural areas and illiteracy levels are high. Knowledge levels are especially low among the poor and women. Knowledge levels on availability of legal aid are also low. There is therefore a need to undertake campaigns to raise public awareness of human rights and the justice system. Such campaigns should be inclusive to ensure that marginalised sections of the population, such as women, youth, rural dwellers and the poor are not excluded.

The distances between where many people live to where formal courts are located are often prohibitively long. It should be borne in mind that the right to justice includes the right of access to courts of law which are fair, impartial and independent. As noted above, the right of access to courts of law is one of the aspects of the right to justice that is not provided for expressly in the Constitution. It is recommended that more court houses need to be built with a reasonable radius to reduce distances. Pending the correction of this anomaly by a constitutional amendment, civil society organisations should undertake advocacy to raise awareness of the existence of the right to access justice among both members of the public and other actors in the justice sector and to undertake initiatives to have this right enforced in the courts.

Physical impediments to accessing justice are compounded by barriers related to the financial cost of accessing justice. Legal representation is costly and affordable to only a few. It would be expected that government-funded legal aid would address the unmet need for legal representation. As it happens, though, Article 18 of the Constitution does not provide for the right to legal aid for all accused persons. It is recommended that the Constitution be amended to guarantee an enforceable right to legal aid to all accused persons who cannot afford to pay for their legal representation. This also requires that the government increase its budgetary allocation to the financing of legal aid. The efforts of the government should be complemented by non-governmental legal aid schemes underpinned by the provision of pro bono services by members of the LAZ. Such non-governmental schemes must be properly coordinated and monitored for quality assurance.

The Legal Aid Board has limited capacity in terms of personnel and cannot offer services to all who need them. Legal aid is not a constitutional right; hence the Mun’gomba Commission was of the view that the Constitution should provide for mandatory legal aid for accused persons who cannot afford the cost of legal representation. Comparatively, constitutions of some countries, such as South Africa, have a provision that compels the state to assign a legal practitioner to an accused person at the state’s expense, if substantial injustice would otherwise result. Lessons should be learnt from these countries on how this position has impacted legal aid and access to justice generally.

**Unreasonable delay**

Unreasonable delay is a significant challenge that requires particular attention. In Zambia, it manifests itself at two levels: case flow and delivery of judgment. The problem is exemplified with respect to criminal cases. Although the Constitution currently guarantees protection by the law to persons charged with criminal offences under Article 18, it is silent on the period that a suspect can be held in custody before the Police are compelled to bring her/him before courts of law. By comparison other African countries, such as Ghana, Malawi, South Africa and Uganda
have Constitutions that are instructive on this issue. These three Constitutions require that a
person arrested and held in custody for a criminal offence be brought before a court of law as
soon as possible, but not later than 48 hours from the time of her/his arrest. It is recommended
that the Constitution of Zambia be amended to include a similar time limit. This will align the
Zambian criminal justice system to the international norms governing the rights of suspects.

Unreasonable delay in the delivery of justice may also be occasioned by delays in the delivery
of judgments, a matter that arose in the 1984 case of Godfrey Miyanda vs The High Court in
which the applicant applied for a writ of mandamus to compel the judge to deliver a judgment.
Judgment had been pending before a High Court judge for over eight months. On appeal, the
Supreme Court held that the remedy of mandamus is not available against the judges of the
superior courts of Zambia in the event of an alleged failure to perform their judicial functions.

On the subject of delayed judgments, the Mun’gomba Commission observed that the concept
of judicial immunity seems to have been misplaced in relation to expeditious disposal of cases.
The Commission stated that judicial immunity appears to be an umbrella under which efficiency
in performance by the judiciary cannot be questioned. Coupled with the power of contempt of
court, courts seem to be out of the ambit of criticism, transparency and accountability. For the
same reason, courts cannot be questioned about their share or contribution to delays in the
administration of justice.

The Commission expressed concern over these delays reiterated that:
• Courts should devote their time to judicial business and not extra-judicial activities;
• Trials should be expeditiously concluded; and
• Judgments should be well written and reasoned and should be delivered on time.

The Commission recommended that the Law Association of Zambia (LAZ), the judiciary and
the government institutions involved should continue to seek ways of addressing the problem.
This problem should especially be of critical concern to the judiciary as it has an impact on public
perception of the effectiveness of the judiciary. The Mun’gomba Commission recommended that
the Constitution should provide that court cases be disposed of and judgment delivered without
undue and unreasonable delays; and the legislature, executive, judiciary, other government
institutions and the LAZ should be urged to identify and implement remedial measures to deal
with the problem of delays in the disposal of court cases.

Given that judges are public officials who have a responsibility to be accountable, there
must be established a mechanism through which they are compelled to perform their duty to
deliver judgments timeously or to provide formal explanations for any substantial delays. It is
recommended that, in addition to the recommendations of the Mung’omba Commission, the
Administration of Justice Act be amended to include a provision to provide for a process through
which accountability for delayed delivery of judgments is enforced.

Traditional, religious and community courts
Traditional ‘courts’ are the closest justice delivery institution for many people in rural areas
which is the only place where they sit. The Mung’omba Constitutional Commission observed
that the de facto existence of traditional courts, presided over by chiefs in rural communities, is
widely acknowledged. These courts deal with minor cases at the community level and appear to be functioning well. The Mung’omba Commission was of the view that the informal existence of these courts outside the official judicial system is a source of strength, in that they are not hampered by legal limitations or procedural rules and regulations that govern the judicial system and enjoy original and final jurisdiction in customary law.

There is passive tolerance of traditional ‘courts’ by the state although they are considered illegal due to the requirement that in order for a court to exist there must be a warrant signed by the minister. They are, however, accepted under the ambit of customary law and practice. This situation is reflective of the dual character of the Zambian legal system. People are drawn to these courts because they implement restorative justice which restores relationships between litigants. There is a need to give some form of recognition to these courts without compromising the benefits of their informality. At the same time, informality must not be permitted to compromise the human rights of litigants and other interested parties who use these ‘courts’. It is recommended that the Chiefs Act be amended so as to recognise this important function of the traditional authorities or alternatively to enact appropriate legislation to recognise these informal structures. There is also an urgent need to set human rights standards in the traditional courts through human rights training of presiding officers.

**Mechanisms to assert rights outside the court system**

There are several mechanisms through which to assert rights outside the court system in Zambia. These include negotiation, conciliation/mediation and arbitration; Commission of Investigation or Office of the Investigator-General (also known as the Ombudsman); and procedures under the Human Rights Commission (HRC). Although a reasonable amount of information dissemination has been done in respect to mediation, and information is given to litigants or would be litigants by the courts and legal practitioners of the availability of these; there is relatively little information available to the public. The HRC runs an information programme but more could be done to reach a wider sector of society. The Investigator-General is little known and there is little, if any, information about their scope of work and the service they offer vis-à-vis assertion of rights.

There is therefore a need for extensive and deliberate dissemination of information of these mechanisms country-wide through various means. Efforts to partner with the private sector to disseminate information can be explored as many private companies and organisations are looking for areas in which they can discharge their community social responsibility. The country holds many traditional ceremonies all year round, which present opportunities for the dissemination of information on mechanisms to assert rights. Telecommunications has also improved in Zambia in the past decade and many service providers have shown willingness to provide toll-free call lines, for example, to victims of gender violence. The willingness of these service providers to do the same for human rights should be explored.
Conclusion

Several recommendations are made in this discussion paper. These call for collaborative efforts by the justice sector institutions. Although there may not be any immediate response to the recommendations in this paper, continuous engagement and dialogue is essential. Advocacy efforts should be strategic, focused and coordinated as these are more likely achieve intended goals and objectives. Government institutions should not see this as a matter for non-state actors as it is often the duty bearer that has to undertake the required actions. There will be a need for honesty and sincerity by all parties during the dialogue and other interactions if ultimately the justice sector in Zambia is to meet the requirements of not only the Constitution but also various international norms, including those on human rights.
Part II
Zambia: Justice Sector and the Rule of Law
Main Report
The Zambian legal framework consists of a multiplicity of customary laws and statutory laws administered through a single formal court system. The statutes are derived from the British legal system with some of the British legislation still deemed to be of full force and effect within Zambia. The common law, the doctrines of equity, the statutes which were in force in England on 17 August 1911 (being the commencement of the Northern Rhodesia Order in Council, 1911); any statutes of later than this date in force in England are all applicable in Zambia subject to the provisions of the Constitution of Zambia and to any other written law.

The customary laws which remain in a state of flux are not written or codified although some of them have been unified under Acts of Parliament. The legal foundation under which customary law plays is said to have elements of colonial continuity which either in essence or in terms of operation, are ‘in stark conflict with constitutional provisions and the expected minimum international standards for a working judicial order’. No clear definition of customary law has been developed by the courts nor has there been any systematic development of this subject.

Although Zambia is a state party to international human rights and regional instruments, it has a dualist system of jurisprudence which considers international treaty law as a separate system of law from the domestic law. Domestication of international instruments by Acts of Parliament is necessary for these to be applicable in the country. Although the Attorney-General is mandated by Article 54(2)(b) of the Constitution to peruse treaties and agreements the government of Zambia is party to, there are no systematic efforts to domesticate international instruments. The extent of domestication of instruments is therefore not easy to measure leading to various mapping exercises and audits being undertaken.

The emergence of a multi-party democracy in 1991 came with much promise of enhanced protection of basic human rights, increased and improved access to justice and commitment to the rule of law. However, it is one thing to advocate and champion for the rule of law and another thing altogether to make that law and make it accessible to the people. Zambia in the third republic has grappled with how to achieve this idyllic position. The 1991 Constitution promised the start of a profound political process that would transcend the simple adoption of a new Constitution, but birth the existence of a political culture that would turn the Constitution
int o a living and lived experience by both the government and the governed. This process was still ongoing at the time of going to press.

The planning and management of the justice system in Zambia was greatly enhanced by the country’s return to national development planning. The return to a multi-party political system led to calls for long-term national planning which had not been the norm during the one-party era. The Transitional National Development Plan saw the Ministry of Justice embark on policy formulation and legislative enactment in the areas of prosecution and legal aid. Plans to extend court annexed mediation were commenced. The more effective discharge of justice has been boosted by a number of infrastructure developments at High Court, subordinate and local court levels.

The National Long Term Vision 2030 (Vision 2030) was initiated in 2005, Zambia’s first ever written long-term plan, expressing Zambians’ aspirations by the year 2030. It articulates possible long-term alternative development policy scenarios at different points which would contribute to the attainment of the desirable social economic indicators by the year 2030. One of these is improved well-being underpinned by core values such as democracy and respect for human rights by 2030 while seeking justice alongside development.

The Constitution of Zambia guarantees the independence of the judiciary by proclaiming that the Judicature shall be autonomous and shall be administered in accordance with the provisions of an Act of Parliament. In Zambia, the Constitution does not explicitly reflect the doctrine of separation of powers through balanced distribution of power and infusion of checks and balances in the exercise of these powers between all the organs of the state. The Mung’omba Constitutional Review Commission (2003–2005) recommended that the Constitution needs to do this and in addition reflect this doctrine as a policy objective or directive principle of state policy.

The prosecutorial functions in Zambia therefore now fall under the office of the National Prosecution Authority (NPA). The NPA is established by an Act of Parliament and is a body corporate. The Act protects the NPA from interference in the performance of its functions or to be subject to the direction or control of any person or authority, other than the Director of Public Prosecutions. The NPA is headed by the Director of Public Prosecutions (DPP), which is a Constitutional office under Article 56 of the Republican Constitution and who is appointed by the President. However, this is with exception to matters of public policy, where the DPP is subject to the direction of the Attorney-General.

The Judicial Service Commission does not play any role in this appointment. Therefore, although the NPA may be said to be independent at law, the limit on the independence of the DPP extends throughout the entire system. The Report of the Mung’omba Constitutional Review Commission noted that the DPP’s exercise of the functions of his office with professional diligence can only be assured if the office is independent from all organs of the state.

At independence, in 1964, there were no Zambian lawyers, but the 2012 directory of members of the Law Association of Zambia (LAZ) lists 938 registered legal practitioners in the country. These numbers are however low for a country of over 13 million citizens. Numbers have stayed low partly due to high failure rate at the Zambia Institute of Advanced Legal Education (ZIALE), the country’s only postgraduate legal academy offering legal practitioners examinations.
Causes for the poor performance of ZIALE remain to be understood. Few cases of harassment of lawyers have been recorded in the country, while complaints against erring lawyers may be made to the Legal Practitioners’ Committee or the Disciplinary Committee of the LAZ.

There is no central depository for crime statistics in the country. The police are reluctant to release crime statistics as it is felt that this may be alarming to the public. The Central Statistical Office, which has a presence in all the provinces, is said to have the capacity to fulfil a great many data needs, although each criminal justice institution collects separate statistics.

During the Fifth National Development Plan, the government introduced reforms that aim to enhance professionalism and accountability and respect for human rights in the Zambia Police Force (ZP). The ZP was reoriented and retrained in community-based service. It established a Community Services Division aimed at contributing to the protection and maintenance of human rights and the promotion of sound police/public relations. However, the ZP continues to abuse police powers under the Public Order Act.

Access to justice is limited by low levels of knowledge of rights and the justice system, physical accessibility, financial accessibility and unreasonable delay in the dispensation of justice. There is passive tolerance of traditional courts by the state although they are considered illegal due to the requirement that in order for a court to exist there must be a warrant signed by the minister. They are however accepted under the ambit of customary law and practice. This situation is reflective of the dual character of the Zambian legal system. People are drawn to these courts because they implement restorative justice, which restores relationships between ‘litigants’.

Zambia’s prison system is characterised by extreme overcrowding, malnutrition, rampant infectious disease, grossly inadequate medical care and routine violence at the hands of prison officers and fellow inmates. Poor sanitation, dilapidated infrastructure, inadequate and deficient medical facilities, meagre food supplies and lack of potable water resulted in serious outbreaks of dysentery, cholera and tuberculosis, which the overcrowding exacerbated. Efforts are being undertaken by government to decongest prisons by building new facilities and encouraging the use of community service sentencing.
Legal and institutional framework

The Zambian legal framework consists of a multiplicity of customary laws and statutory laws administered through a single formal court system.¹ Some of the British legislation is still deemed to be of full force and effect within Zambia. The British Acts Extension Act provides for the extension or application of certain British Acts to Zambia and for amendments to certain British Acts in their application to Zambia.² The English Law (Extent of Application) Act declares to which extent the law of England applies in the Republic. It provides that the common law, the doctrines of equity and the statutes which were in force in England on 17 August 1911 (being the commencement of the Northern Rhodesia Order in Council, 1911); any statutes of later date than 17 August 1911 in force in, applied to the Republic and which shall apply thereafter by any Act or otherwise; and the Supreme Court Practice Rules of England in force until 1999. However, the Civil Court Practice 1999 (‘The Green Book’) of England or any other civil court practice rules issued after 1999 in England do not apply to Zambia except in matrimonial causes.³ The domestic law thus comprises of the Constitution, laws enacted by the Zambian Parliament and English statutes that are applicable in the country through the British Acts Extension Act and the English Law (Extent of Application) Act, the common law and doctrines of equity.⁴ It also includes unwritten customary law of the various tribes in the country.

¹ Although traditional courts operate in rural areas, they are not formally recognised by law.
² Chapter 10 of the Laws of Zambia.
³ Section 2 of the English Law (Extent of Application) Act, Chapter 11 of the Laws of Zambia.
⁴ Chapter 2 of the Laws of Zambia. This is an Act that provides for the extension or application of certain British Acts to Zambia and amendments to certain British Acts in their application to Zambia. The Acts of the Parliament of the United Kingdom that are deemed to be of full force and effect within Zambia are set out in a Schedule to the Act.
Customary laws are in a state of flux and are not written or codified although some of them have been unified under Acts of Parliament. An example of legislation where customary law has been unified is the Intestate Succession Act. This Act provides a uniform intestate succession law that is applicable throughout the country, departing from the situation where the manner of intestate succession was determined by the particular tribal norms and practices of the deceased. The legal foundation of customary law is said to have elements of colonial continuity which either in essence or in terms of operation, are ‘in stark conflict with constitutional provisions and the expected minimum international standards for a working judicial order’. No clear definition of customary law has been developed by the courts, nor has there been any systematic development of this subject as a matter of policy. Zambia, which operates a dualist system of jurisprudence in which international treaty law is considered to be a separate system of law from the domestic law, is a state party to various international human rights and regional Instruments. Domestication of international instruments by Acts of Parliament is necessary for them to be applicable in the country. Although the Attorney-General is mandated by Article 54(2)(b) of the Constitution to peruse treaties and agreements the government of Zambia is party to, there are no systematic efforts to domesticate international instruments. The extent of domestication of instruments is therefore not easy to measure.

A. International and constitutional rights framework

Enabling legislation for domestic applicability of international instruments has only been enacted in very limited cases, for example, the Bretton Woods Agreements Act, the Investment Disputes Convention Act, Diplomatic Immunities and Privileges Act and the Convention for Unification of Certain Rules Relating to International Carriages by Air. As for human rights instruments, specific legislation has to be enacted to make them applicable at domestic level.

International rights framework

During the 47 years following the attainment of independence, the Republic of Zambia has signed seven of the United Nations (UN) Human Rights treaties. It has thereby made binding international commitments to adhere to the human rights standards laid down in these instruments. Zambia’s ratification of these instruments is not always without reservations. For

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5 Chapter 59 of the Laws of Zambia. Succession and inheritance under customary law was dependent on the kinship system of the tribes and ethnic groups. Three kinship systems exist in Zambia, i.e. patrilineal, matrilineal and bilateral systems. Today the administration of customary law is on the premise that it is not repugnant to natural justice or morality or incompatible with the provisions of any written law.


8 Chapter 367 of the Laws of Zambia.

9 Chapter 42 of the Laws of Zambia.

10 Chapter 20 of the Laws of Zambia.

11 Chapter 447 of the Laws of Zambia.

12 See Annexure for a complete list of relevant instruments signed, ratified or acceded to by Zambia, www.ohchr.org (accessed 3 November 2011).
example, Zambia has reservations to the 1951 UN Convention Relating to the Status of Refugees in respect of Articles 17, 22, 26 and 28, relating to the right to work, education and freedom of movement and provision of travel documents. Consequently, for example, although the Constitution provides that any person who is arrested or detained must be furnished with the grounds for his detention in writing within 14 days, Zambian courts have held that this provision does not apply to refugees or those deemed to be prohibited immigrants. However, it should be noted that the reservation on education is not state practice, as the current policy is that all recognised refugees are able to access schools on the same basis as Zambian nationals and pay the same fees.

Inhabitants of Zambia and their representatives are however able to invoke their human rights through the bodies established by the UN treaties. Zambia as a constitutional democracy, with a repetitive history of constitution-making of over 40 years, acknowledges some of the rights provided for by international law and the Constitution. The Constitution is thus the first point of call for inhabitants in the face of human rights violations. Complaints have been brought by Zambians and Zambian human rights advocates before international tribunals on matters of violation of human rights. In Legal Resources Foundation vs Zambia, for example, a complaint was brought before the African Commission on Human Rights by the Legal Resource Foundation, a human rights organisation.

The complaint concerned an amendment to the Zambian Constitution that restricted the right to run for President to persons who could prove that both their parents were Zambians. In the event, the Commission held that: The Republic of Zambia was in violation of Articles 2, 3(1) and 13 of the African Charter; strongly urged the Republic of Zambia to take the necessary steps to bring its laws and Constitution into conformity with the African Charter; and requested the Republic of Zambia to report back to the commission when it submitted its next country report in terms of Article 62 on measures taken to comply with this provision.

13 With regard to Article 17 paragraph 2, Zambia does not consider itself bound to grant to a refugee who fulfils any one of the conditions set out in sub-paragraphs (a) to (c) automatic exemption from the obligation to obtain a work permit. Further, with regard to Article 17 as a whole, Zambia does not wish to undertake to grant to refugees rights of wage-earning employment more favourable than those granted to aliens generally; Article 22(1): Zambia considers Article 22(1) to be a recommendation only and not a binding obligation to accord to refugees the same treatment as is accorded to nationals with respect to elementary education; with regard to Article 26, it reserves the right to designate a place or places of residence for refugees; and with regard to Article 28, Zambia considers itself not bound to issue a travel document with a return clause in cases where a country of second asylum has accepted or indicated its willingness to accept a refugee from Zambia.

14 Mifiboshe Walulya vs The Attorney-General, 1984, ZR 89. In that case the Supreme Court held that that provision of the Constitution did not apply to a Ugandan national detained under the Immigration Act, and it was not necessary that he was provided with written grounds.

15 All inhabitants of Zambia may turn to the UN Human Rights Committee through procedure 1503, to the Special Rapporteurs for violations of specific human rights or to the United Nations Economic and Social Council (ECOSOC) for women’s rights violations. Further, since Zambia is a member state of the United Nations Educational, Scientific and Cultural Organization (UNESCO), its citizens may use the UNESCO procedure for human rights violations in UNESCO’s fields of mandate. Zambia employers’ or workers’ and other Zambian organisations may file complaints through the International Labour Organization in the cases of those conventions which Zambia has ratified. See www.claiminghumanrights.org/ecosoc_procedure.html (accessed 12 November 2011).
In *Amnesty International vs Zambia,* Amnesty International submitted a Communication on behalf of William Steven Banda and John Lyson Chinula. The duo were served with deportation orders on grounds that they were likely to be a danger to peace and good order in Zambia. The complainant alleged that Articles 2, 5, 7(1)(a), 8, 9(2), 10, 12(2), 13(1), 18(1), 18(2) of the African Commission on Human and Peoples’ Rights had been violated. The Commission found that the state was in violation of the said Articles. It also indicated that, in deporting the two men, the government of Zambia had denied them the exercise of their right to freedom of association because their deportation prevented them from associating with their fellow members of the United National Independence Party and participating in their activities.

In *Peter Chiiko Bwalya vs Zambia,* the complainant was at the time the chairman of the People’s Redemption Organisation, an association considered illegal under the terms of the country’s one-party Constitution. He claimed to have been detained for 31 months on charges of belonging to this organisation and for having conspired to overthrow the government of the then President Kenneth Kaunda. This, in the Committee’s opinion, was a violation of Articles 9, Paragraphs 1 and 3, 12, 19, Paragraph 1, 25(a) and 26 of the Covenant. The Committee urged the state party to grant appropriate compensation to the author and stated that the state party is under an obligation to ensure that similar violations do not occur in the future. The Committee also requested for information, within 90 days, on any relevant measures taken by the state party in respect of the Committee’s views. Three years after the Committee’s decision, the Zambian government overturned Banda and Chinula’s deportation orders, invited Banda to return unconditionally and allowed for the return of Chinula’s remains after he had died in exile. No information was obtainable as to whether Peter Chiiko Bwalya was compensated as directed by the Committee or whether the information requested by the Committee on any relevant measures taken by the state party in respect of the Committee’s views in both cases was availed.

Although Zambia’s record in discharging its treaty reporting obligations has improved notably after 1991, reporting was less compliant to requirements of the treaty monitoring bodies prior to this. As a result, the first report due on 5 March 1973 was submitted on 1 March 1975; the second to sixth report due on 5 March 1975 was submitted on 22 December 1982; the seventh to eleventh report due on 5 March 1985 was submitted on 22 February 1993; the twelfth to sixteenth report due on 5 March 2003 (to session No. 63) was submitted on 4 August 2003; and the twelfth to sixteenth report due on 5 March 1993 (to session No. 67) was submitted on 13 July 2004. The seventeenth to nineteenth periodic reports were submitted as one document on 5 March 2009. Government is currently up to date with its reporting obligations under the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and other Cruel,

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19. In December 1990, Zambia went through a political transition returning to a multi-party political system on an amended Constitution under which elections were held in 1991 marking the start of the third Republic. Zambia’s post-colonial political and economic history is divided into three distinct periods characterised by political dispensation, the economic situation and constitutional arrangements referred to as republics. The first Republic lasted from 1964 to 1972. The second Republic refers to the 17-year period from 1973 to 1990 when Zambia was under one-party rule. See Republic of Zambia, 2005.
Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Zambia is also up to date with reports on the Convention on the Elimination of All Forms of Discriminations against Women (CEDAW).

The Constitution

Zambia’s first Constitution was the 1964 independence Constitution which was developed as a result of negotiations among the major political actors of the day. The Constitution came into being through the Zambia Independence Order of 1964. This Constitution was based on a Westminster model designed for the emerging nations of former British colonies and protectorates. The 1964 Independence Constitution was developed as a result of negotiations among the major political actors of the day. The constitutional arrangements were aimed at resolving the conflicting interests of the indigenous Africans, the settler white community and the colonial government.

The Constitution came into being through the Zambia Independence Order, 1964. The 1964 Constitution is not perceived as a creation of Zambians as reports indicate that they were not involved in its making. It established a form of government where no unreasonable restrictions were to apply to anyone seeking to become a representative. It also provided a framework where the freedoms of its citizens would be secured by rights and liberties which were guaranteed by the Constitution. The Constitution had strict procedures relating to its alteration.

In 1969, a referendum was organised and four years later, the Chona Constitutional Review Commission (the Chona Commission), headed by the then Vice-President Mainza Chona was established in a move that led to the institutionalisation of one-party rule. The Chona Commission was appointed to receive evidence and examine the form of one-party state Zambia would adopt. In its terms of reference, the Commission had no mandate to hear evidence on the desirability or otherwise of a one-party state. Thus, the 1973 Constitution was manipulated for political expediency. The government used the Chona Constitutional Review Commission to

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20. In respect of the ICESCR, the Committee adopted a new reporting schedule in 1990, which resulted in consolidating the procedure of reporting, so that the three reports on three different sets of Articles in the convention was no longer required. For those State Parties that submitted initial reports on only one or two sets of Articles, consolidation of the reporting procedure did not eliminate responsibility to submit a further or initial periodic report. The post-1990 reporting schedule requires a further ‘initial’ or similar numbered periodic report. Zambia only submitted one see, http://www.unchr.hr (accessed September 2011).

21. The initial and second periodic reports were submitted together as one document and were considered by the CEDAW Committee in 1994. Zambia’s third and fourth periodic report covered the period 1964 to 1997. Although it was the combined third and fourth report, it was prepared as an initial report as it would form the basis for subsequent reports, according to Zambia’s State Party report, which further observed that the CEDAW Committee had noted that previous reports were inadequate.


entrench itself by banning all other political parties by disqualifying them from participating in any elections in Zambia.25

The dreary economic situation of the Second Republic (the years from 1973 to 1990 when Zambia was under one-party rule) reached extreme levels and propelled the country into a new political order.26 By September 1990, there was overwhelming indication of widespread public desire to return to multi-party politics.27 President Kaunda announced the cancellation of a referendum on the Constitution that had been set for 17 October 1990 and instead appointed a Constitution Review Commission to recommend a political order for the Third Republic. The Commission was chaired by Professor Mphanza Patrick Mvunga, the then Solicitor-General and has henceforth been referred to as the Mvunga Commission. The thrust of the terms of reference of the Mvunga Commission was to design a Constitution that would mark a departure from the one-party Constitution and usher in a pluralist political order.28

Soon after coming into office in 1991, the Movement for Multi-party Democracy (MMD) government initiated another constitution review process led by Mr John Mwanakatwe, SC (referred to as the Mwanakatwe Commission). It made far-reaching recommendations that led to the 1996 Constitution. Notable among these were the strengthening of the Bill of Rights and the inclusion of a range of new rights. The 1996 Constitution was considered to lack popular legitimacy as it did not take into account most of the submissions made by the people.29 It was also this Constitution which barred Zambian citizens born outside Zambia from standing for elections, something which was widely perceived by civil society, the opposition and Zambia’s donors as a ploy by the then Republican President Chiluba, to ban the former President Kenneth Kaunda from standing for reelection.30 The Mwanakatwe Commission was also invited to examine the issue of the mode of adoption of the Constitution. Following overwhelming demand by the people, the Mwanakatwe Commission recommended adoption of the Constitution through a Constituent Assembly whose composition would comprise of various interest groups. This was rejected by the government.

Historically, constitution-making in Zambia has been initiated by successive governments under the Inquiries Act.31 Under the provisions of the Act, the President determines the terms of reference and appoints members of the Commission. At the end of the process, the report of the Commission is submitted to the President. It is the prerogative of the President and Cabinet

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25 The Constitution (Amendment) Act No. 5 of 1972 thus reads: ‘There shall be one and only one political party organisation in Zambia, namely the United National Independence Party (in this Constitution referred to as “the Party”). Nothing contained in this Constitution shall be so construed as to entitle any person lawfully to form or attempt to form any political party or organisation other than the Party, or to belong to, assemble or associate with, or express opinion or do any other thing in sympathy with, such political party or organisation.’
26 The shift in the political order in Zambia was catalysed by serious economic difficulties as the country continued to descend into a deep economic abyss. Republic of Zambia, 2005, see Report of the Constitution Review Commission, xxviii.
27 This was seen not only as a return to democracy, but also as a triumph for the people of Zambia in their fight against a repressive regime and an opportunity to rise from a dismal economic situation.
30 Article 34(3)(b). A person shall be qualified to be a candidate for election as President if both his parents are Zambians by birth or descent.
to accept or reject recommendations of the Commission and to initiate a Constitution Bill. All
three processes of constitutional review described above have seen the rejection of a considerable
number of recommendations and their replacement with the government’s own views.

Constitutional protection of human rights
As a signatory to major UN and regional treaties protecting human rights, Zambia has an
obligation to respect, protect and fulfil the human rights of all citizens as contained in these
treaties. The Zambian Constitution has a Bill of Rights that incorporates most of the civil and
political rights recognised by international treaties. The Bill of Rights recognises and declares
that every person in Zambia has been and shall continue to be entitled to the fundamental rights
and freedoms of the individual irrespective of their race, place of origin, political opinions, colour,
creed, sex or marital status.\footnote{32}

The Constitution specifically recognises the right to protection of life; personal liberty;
freedom from slavery and forced labour; freedom from inhuman treatment and deprivation of
property; privacy of home and other property; freedom of conscience; freedom of expression;
freedom of assembly and association; and freedom of movement. It also recognises protection
of every person from discrimination and prohibits the exploitation of young persons. The
Constitution also guarantees the right to privacy as well as protection from deprivation of
property without compensation.\footnote{33} These rights and freedoms may be enjoyed within certain
limits, among which is that the enjoyment of these rights must not be prejudicial to the public
interest.\footnote{34} Protection of the rights and freedoms is subject to such limitations as are designed to
ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice
their enjoyment by others or the public interest.

Article 23(1) of the Constitution proscribes any law that makes any provision that is
discriminatory either of itself or in its effect. This provision however does not apply to any law so
far as that law makes provision with respect to adoption, marriage, divorce, burial, devolution of
property on death or other matters of personal law for the application in the case of members of
a particular race or tribe and of customary law.\footnote{35} The preamble of the Constitution pledges that
the state shall respect the rights and dignity of the human family, uphold the laws of the state and
conduct the affairs of the state in such manner as to preserve, develop and utilise its resources
for this and future generations. It also resolves to uphold the values of democracy, transparency,
accountability and good governance.

Although Zambia ratified the ICESCR in 1984, the Bill of Rights has not risen to the
challenge to progressively realise this class of rights in accordance with the Convention.
These rights are therefore not justiciable (enforceable) in Zambian courts.\footnote{36} Citizens have
repeatedly petitioned Constitutional Review Commissions appointed over the four decades after

\footnote{32} Article 11 of the Constitution, 1996.
\footnote{33} Article 11(a)–(d).
\footnote{34} Article 11(d).
\footnote{35} Article 23(4)(c) of the Constitution of Zambia, 1996 (Act No. 18 of 1996).
\footnote{36} The Constitution Review Commission, led by Mr John Mwanakatwe, SC (also referred to as the Mwanakatwe Constitutional
Review Commission) recommended the recognition of economic social and cultural rights, which would be defined in the
Directive Principles of State Policy. The Commission was constituted by the MMD government in 1991.
independence for the Constitution to have this class of rights included in the Bill of Rights to no avail. Whereas the Mwanakatwe Constitutional Review Commission recommended that these rights must be defined in the Directive Principles of State Policy, the most recent Mung’omba Constitutional Review Commission recommended that these rights should be enshrined in the Bill of Rights and should be justiciable. The government position is, however, that the challenge to progressively realise economic, social and cultural rights is too enormous for a developing country with inadequate resources to provide enough schools, hospitals, social amenities (such as water and sanitation) and decent shelter.

**Constitutional challenges to the law**

Article 1(2) of the Constitution of Zambia provides that the Constitution is the supreme law of Zambia and all laws derive their authority from it. Any other law inconsistent with the Constitution is, to the extent of the inconsistency, void. This implies the supremacy of the Constitution and laws or actions taken that contravene the Constitution may be struck down by courts as being unconstitutional. While superior courts are empowered to interpret the Constitution and hence have the power to declare an Act of Parliament unconstitutional, it is rare for the same courts to rule that legislation or regulations are not in compliance with international law. One case that may be cited where the court issued a ruling to the effect that a policy was not in compliance with an international instrument is the famous Sara Longwe case.

In this case the Intercontinental Hotel in Lusaka had a policy of refusing women entry, unless they were accompanied by a male escort. A security guard stopped Longwe when she tried to retrieve her children from a party at the hotel. On another occasion, the same hotel had refused Longwe admittance when she had arranged to meet a group of women’s activists in the hotel’s bar. Longwe made a claim to the High Court, arguing that the hotel’s actions violated her right to freedom from discrimination under both Zambia’s new Constitution and under Articles 1, 2 and 3 of CEDAW. The court ruled in her favour and upheld Zambia’s duty to carry out the international standards it adopted by ratifying CEDAW without reservations.

However, in the similar case of Elizabeth Mwanza, the learned Honourable Mr Justice Peter Chitengi, in the High Court, refused to be persuaded to follow the earlier ruling of the Sara Longwe case on grounds that the CEDAW was not part of the domestic legislation and that the act of restraining the applicant from entering a public area of the hotel was not discriminatory as the hotel had right to restrict access to its premises. This illustrates the position taken by the courts in Zambia as regards to international human rights law; that is, the courts are reluctant to rely on such instruments unless these are domesticated or backed by a provision in domestic legislation.

The courts have, however, been more devoted to declaring legal provisions as contravening

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37 Appointed in 1993.
38 On 17 April 2003, by Statutory Instrument No. 40 of 2003, His Excellency the President, Mr Levy Patrick Mwanawasa, SC, in exercise of the powers under the Inquiries Act, Chapter 41 of the Laws of Zambia, appointed a commission, chaired by Mr Wila D. Mung’omba (also referred to as the Mung’omba Constitutional Review Commission) to review the Constitution of Zambia. The Mun’gomba Commission published its report and a draft Constitution on 29 December 2005.
41 Elizabeth Mwanza vs Holiday Inn Hotel, HP/145/1987.
the Constitution. The most laudable of these is the decision in *Christine Mulundika and seven others vs The Attorney-General*,⁴² where in an extraordinary show of assertiveness, the Supreme Court struck down Sections 5 and 7 of the Public Order Act for being unconstitutional as they infringed the freedoms of expression and assembly guaranteed by Articles 20 and 21 of the Constitution, respectively.⁴³ Section 5 required the vetting of persons wishing to address a public meeting as well as the matters to be addressed prior to meeting. Section 7 made it an offence to contravene Section 5, which was punishable by imprisonment of up to six months or a fine. Three ministers, led by the Vice-President (the leader of the house in Parliament and number two man in the executive) opened a vicious attack in Parliament on the Supreme Court following the decision in Mulundika.⁴⁴ The Vice-President was quoted as saying: ‘We will make amendments to see that sense comes to the law so that we don’t have anarchy.’ Legal Affairs Minister Remmy Mushota went on to state that ‘any attempt by anyone to use the bench for legislation would land them into trouble’.⁴⁵ The legislature quickly amended the Act by putting in place a new section 5 with the effect of giving discretion to the police to decide who should exercise their constitutionally guaranteed rights.

Human rights provisions in the Constitution are directly applied in Zambian courts.⁴⁶ Thus, in *Resident Doctors Association of Zambia vs The Attorney-General*, the court awarded both general and exemplary damages to the petitioners stating that ‘state action which impedes the citizen’s enjoyment of their Constitutional freedoms should not be condoned’.⁴⁷ The court applied Articles 20 and 21 of the Constitution of Zambia of 1996 relating to the rights freedoms of expression, assembly and association. Similarly, Arthur Wina and six others petitioned the court for redress alleging denial of their fundamental rights.⁴⁸ The court decided that the petitioners were denied their constitutional right to expression under Article 22 of the Constitution and of assembly under Article 23.

There is little empirical evidence on the extent of accessibility of the courts that deal with constitutional matters (i.e. the High Court and the Supreme Court). However, some barriers to access have been identified in earlier studies.⁴⁹ Matibini notes that the language and procedures

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⁴² See Case Study 1 for detailed facts.
⁴³ *Christine Mulundika and seven others vs The Attorney-General*, 1995–1997) Z.R., 20. See Case Study 1. Section 5 of the Public Order Act (Chapter 113 of the Laws of Zambia) requires that every person who intends to assemble or convene a public meeting, procession or demonstration shall give police at least seven days notice of that person’s intention. The authorities may determine the date and place of and time at which the public meeting will take place, the persons who may or may not be permitted to address such a meeting and the matters which may or may not be discussed. These provisions do not apply to meetings called by those in government such as the President, the Vice-President, ministers and junior ministers.
⁴⁶ Constitution of Zambia, 1996, Article 28(1) provides the if any person alleges that any of the provisions of Articles 11–26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall: (a) hear and determine any such application; (b) determine any question arising in the case of any person which is referred to it in pursuance of clause (2); and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11–26 inclusive.
⁴⁸ *Arthur Lubinda Wina and six others vs The Attorney-General*, 1990/HP/1511.
employed in these courts, though mitigated by language interpreters, pose a barrier and present the problem of distortion of evidence provided by litigants.\textsuperscript{50} The rigidity of the court procedures, intimidating aura in the court rooms and the reverence with which the High Courts are viewed are said to limit access.\textsuperscript{51} Data indicates that levels of public awareness of human rights and mechanisms of justice that are available are low among the members of the general public.\textsuperscript{52} The Mung’omba Constitutional Review Commission noted the concerns of petitioners with respect to accessibility to courts, particularly the Supreme Court and High Court at provincial and district levels, especially in rural areas.\textsuperscript{53} The few numbers of superior courts available in the country is another limiting factor in accessing justice.\textsuperscript{54}

Another area of constitutional challenges to the law relates to the provision for challenging statutory instruments (SIs). Article 27 has a provision for challenging any SIs as inconsistent with the Constitution.\textsuperscript{55} The Article stipulates that a request for a report on an SI being challenged must be made to the authority having the power to make the instrument, upon which the Chief Justice shall appoint a tribunal consisting of two persons selected by him from amongst persons who hold or have held the office of a judge of the Supreme Court or the High Court. The tribunal shall, within the prescribed period, submit a report to the President and to the Speaker of the National Assembly stating whether or not in the opinion of the tribunal any, and if so which, provisions of the SI are inconsistent with the Constitution and the grounds upon which the tribunal has reached that conclusion. The President may, by order annul that SI and it shall thereupon be void from the date on which it was made.\textsuperscript{56}

B. Structure of the court system

The court structure in Zambia is hierarchical. From the top, the hierarchy consists of the Supreme Court, the High Court, the Industrial Relation Court and subordinate courts, with the local court at the bottom of the hierarchy.\textsuperscript{57} Local courts, which have jurisdiction in all customary law matters, are regulated by the Local Courts Act and have different grades, exercising jurisdiction only within the limits prescribed for such grade.\textsuperscript{58} Local courts administer African customary law in any matter so far as such law is not repugnant to natural justice or morality or incompatible with the provisions of any written law.\textsuperscript{59} Although the local courts can try criminal

\begin{itemize}
\item \textit{of the Poor.}
\item \textsuperscript{50} Ibid.
\item \textsuperscript{51} Ibid.: 22.
\item \textsuperscript{52} Ibid.: 20.
\item \textsuperscript{54} The High Court has permanent presence in Kitwe, Lusaka, Ndola and Livingstone and only on a circuit basis in other provincial headquarters. The Supreme Court has permanent presence in Lusaka only and circuits the province headquarters.
\item \textsuperscript{55} Constitution of Zambia, 1996. Acts of Parliament often give power to a minister to issue statutory instruments.
\item \textsuperscript{56} This power is conferred on the President under Article 80(3) of the 1996 Constitution of Zambia.
\item \textsuperscript{57} Article 91 of the 1996 Constitution of Zambia provides that ‘the judicature of the Republic shall consist of the Supreme Court of Zambia, the High Court of Zambia, the Industrial Relations Court, the subordinate courts, the local courts; and such other courts as may be prescribed by an Act of Parliament’.
\item \textsuperscript{58} Local Courts Act (Chapter 29 of the Laws of Zambia).
\item \textsuperscript{59} Section 12 of the Local Courts Act. Further, section 5(1) provides that ‘Local courts shall be of such different grades as may be prescribed, and local courts of each grade shall exercise jurisdiction only within the limits prescribed for such grade provided
\end{itemize}
offences punishable by an order for probation or imprisonment for a period not exceeding two years, they are prohibited from trying any case in which a person is charged with an offence in consequence of which death is alleged to have occurred or which is punishable by death.60

The main workload of local courts relates to non-statutory marriages, divorce, reconciliation, custody of children, payment of mabolo or lobola and distribution of the property of persons who die without a will. The effective handling of these disputes and their fair and just resolutions are aimed at assuring stability in the community. Local courts are presided over by officers who until recently were known as local court justices.61 They have no uniform formal educational qualification but bring important innovation in the administration of community justice derived in part from their practical understanding of the workings of a post-traditional society. These adjudicators are often fluent in more than four local languages and are guided by the Local Court Handbook.

Above the local courts are subordinate courts,62 located in all the districts of the country.63 These courts are presided over by magistrates of different classes and administer law and equity concurrently. The subordinate courts are courts of the first instance, as well as courts of record and decide all matters as provided for by the Subordinate Court Act except for treason, murder, aggravated robbery, election petitions and matters that involve the interpretation of the Constitution.64 The subordinate courts have limited sentencing jurisdiction in criminal matters and where the stipulated sentence is in excess of the limit of a specific court, the record matter is sent to the High Court for confirmation and sentencing after conviction. Representation by lawyers is permissible in the subordinate courts. Appeals against judgements or orders of the subordinate court lie to the High Court.

At the next level of the hierarchy is the High Court which has unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and power as may be conferred on it by the Constitution or any other law.65 The High Court hears appeals from the subordinate courts and petitions relating to parliamentary elections except those relating to presidential elections.66 Subordinate courts do not handle cases

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60 Sections 9 and 11 of the Local Courts Act.
61 Now ‘local court magistrates’.
62 Established under Chapter 28 of the Laws of Zambia.
63 Section 3 of the Subordinate Court Act.
64 Chapter 28 of the Laws of Zambia.
65 Article 94(1) of the Constitution, 1996.
66 Article 41 of the Constitution provides that ‘where any question arises as to the election of the President, it shall be heard by a full bench of the Supreme Court’. This should be read with Article 34. The question of the jurisdiction of the Supreme Court in this respect was laid to rest in Mazoka and others vs Levy Patrick Mwanawasa, Electoral Commission of Zambia and the Attorney-General, ZR 138 (SC) L. Article 72 of the Constitution provides that High Court power to hear and determine any question whether any person has been validly elected or nominated as a member of the National Assembly. Other relevant provisions are Section 17 of the High Court Act Civil which provides that appeals from subordinate courts shall be heard by one judge except where in any particular case the Chief Justice shall direct that the appeal shall be heard by two judges; Section 28 of the Subordinate Court Act which provides that ‘an appeal shall lie to the High Court from any judgment, order or decision of a subordinate court whether interlocutory or final’; Section 321 of the Criminal Procedure Code which provides that ‘any person convicted by a subordinate
of infringement or likely infringement of constitutional rights. If any question arises as to the contravention of any of the provisions of the Bill of Rights, the presiding magistrate may refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious.67

As a superior court of record, the High Court has jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court martial and may make such orders, issue such writs and give such direction as it may consider appropriate for ensuring that justice is duly administered by any such court. The High Court is presided over by judges and the Chief Justice of the Republic of Zambia is an ex-officio judge of the High Court.68 Appeals from the High Court lie to the Supreme Court. The Commercial Court is a special division of the High Court and deals with complex cases arising out of business disputes, both local and international.69 It is important because of its direct impact on the economic, commercial and financial sectors. The jurisdiction of the Commercial Court includes matters such as insurance, competition, mortgage, contracts, winding up companies, taxation, bankruptcy, banking and financial services.

The Supreme Court is at the apex of the Zambian justice delivery system. It has appellate jurisdiction for all legal and constitutional disputes and such other jurisdiction and powers as are conferred on it by the Supreme Court Act,70 the Republican Constitution and any other law.71 Known as the Court of Appeal until 1972, the Supreme Court is a superior court of record and has all the powers of such a court. Unlike other jurisdictions, the Zambian Supreme Court has appellate jurisdiction in all legal and constitutional disputes. Article 28(4) provides that Parliament may confer upon the Supreme Court or High Court such jurisdiction or powers in addition to those conferred by this Article as may appear to be necessary or desirable with the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it, thus enabling any application for redress to be more speedily determined.72 It also has supervisory and review jurisdiction over all courts of Zambia. The Chief Justice is empowered to make rules with respect to the practice and procedure of the Supreme Court in relation to jurisdiction and powers of the Supreme Court.73 The Supreme Court is presided over by judges whose qualifications for appointment are stipulated under Article 97 of the Constitution.74 It has no permanent

court may appeal to the High Court'; and section 27 of the Electoral Act (Chapter 13 of the Laws of Zambia), which provides that 'election petitions are to be tried by the High Court'.

67 Article 28(2) of the 1996 Constitution of Zambia. There is no right of appeal against the ruling that such proceedings are frivolous or vexatious.

68 Article 94(3) of the 1996 Constitution of Zambia.

69 The Commercial Court is a judicial institution and a division of the High Court. It was established by an amendment to the High Court Act.

70 Chapter 25 of the Laws of Zambia.

71 Article 92 of the Constitution provides that 'there shall be a Supreme Court of Zambia which shall be the final court of appeal for the Republic and shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law'.

72 Article 28 of the Constitution gives the right for redress against violation of any provisions of the Bill of Rights.

73 Article 92(6) of the Constitution.

74 A person shall not be qualified for appointment as a judge of the Supreme Court, a puisne judge or chairman or deputy chairman of the Industrial Relations Court unless (a) he holds or has held high judicial office; or (b) he holds one of the specified qualifications and has held one or other of the following qualifications: (i) in the case of a Supreme Court judge, for a total period of not less than 15 years; or (ii) in the case of a puisne judge, the chairman and deputy chairman of the Industrial Relations Court, for a total period of not less than ten years.
presence outside the capital city of Lusaka and only conducts circuit court sessions in some of the provincial centres.

**Specialised courts**
Zambia has several judicial and quasi-judicial courts or institutions with specialised functions. These include the Industrial Relations Court, small claims court, revenue appeals tribunal, courts martial and the lands tribunal.  

**The Industrial Relations Court**
The Industrial Relations Court (IRC) is a court with quasi-judicial functions and deals with disputes relating to labour issues. The IRC is presided over by the chairperson and vice-chairperson who are persons qualified to be judges of the High Court. Although the Industrial Relations Court is part of the judicature as provided for under Article 91 of the Constitution, the court is not established by the Constitution, as is the case with the Supreme Court, High Court and local court. The court is established under the Industrial and Labour Relations Act. The Constitution makes provision for the appointment, qualifications and tenure of office of the chairperson and deputy chairperson of the Industrial Relations Court. Other members of the court are appointed by the minister responsible for labour and social security and do not enjoy the same conditions of service as those applicable to judicial officers. Assessors are nominated by the minister, while the registrar, other officers and staff of the court are appointed by the Judicial Service Commission. The jurisdiction of the court in industrial and labour matters includes inquiring into and making decisions in collective disputes, interpreting the terms of collective agreements and recognition agreements and generally adjudicating upon any matter affecting the collective rights, obligations and privileges of employees, employers and representative organisations. Appeals from the IRC lie to the Supreme Court.

**The juvenile court**
Under section 63 of the Juveniles Act, a subordinate court sitting for the purposes of hearing any charge against a juvenile or exercising any other jurisdiction conferred on juvenile courts by or under the Juveniles Act or any other Act sits as a juvenile court. The proceedings of the juvenile court are regulated by the Juveniles Act and the court has jurisdiction to hear cases for any offence other than homicide or attempted murder. No application or matter assigned to juvenile courts shall be heard by a subordinate court which is not a juvenile court and the words ‘conviction’ and ‘sentence’ shall not be used in relation to juveniles dealt with by a subordinate court. Under section 71, the Chief Justice may by statutory instrument make rules of court for regulating the procedure and practice of juvenile court. Provisions of the Subordinate Courts Act or of any other enactment that regulate procedure in criminal cases shall have effect subject to any such rules.

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75 The Commercial Court (discussed above) may also be said to be a specialised court although it is a division of the High Court. The local court is also considered a specialised court as it hears matters relating to customary law.
76 Article 95.
77 Chapter 269 of the Laws of Zambia.
78 See note above 64 above.
79 Chapter 53 of the Laws of Zambia.
Where the juvenile court finds the juvenile guilty, it may:

- Dismiss the charge;
- Make a probation order in respect of the offender;
- Send the offender to an approved school;
- Send the offender to a reformatory;\(^{80}\)
- Order the offender to pay a fine, damages or costs;
- Order the parent or guardian of the offender to pay a fine, damages or costs;
- Order the parent or guardian of the offender to give security for the good behaviour of the offender;
- (Where the offender is a young person) sentence him to imprisonment;\(^{81}\) or
- Deal with the case in any other manner in which it may legally be dealt with.

The lands tribunal

The lands tribunal is a quasi-judicial institution which was initially established under the Lands Act\(^ {82}\). Parliament however enacted the Lands Tribunal Act to continue the existence of the lands tribunal and provide for the powers and functions of the tribunal.\(^ {83}\) The Lands Tribunal Act broadens the jurisdiction and powers of the lands tribunal to matters arising under the Housing (Statutory and Improvement Areas) Act.\(^ {84}\) The lands tribunal consists of a chairman who should be a legal practitioner of not less than seven years experience; a deputy chairman who should be a legal practitioner of not less than seven years experience; a representative of the Attorney-General’s chambers who should be a legal practitioner of not less than seven years experience;\(^ {85}\) a representative of the Law Association of Zambia (LAZ) who should be a legal practitioner of not less than seven years experience; a representative of the House of Chiefs; a planner registered under the Urban and Regional Planners’ Act of 2010; a land surveyor registered under the Land Survey Act; a valuation surveyor registered under the Valuation Surveyors’ Act and not more than three persons from the public and private sector.\(^ {86}\) The members hold tenure for five years that may be renewed for another five-year term.

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\(^{80}\) A child (under 16) can only be sent to a reformatory if the court is satisfied that it is necessary for their reformation and the prevention of crime (section 72 of the Juveniles Act).

\(^{81}\) However, no child (under 16) can be sentenced to imprisonment or to detention in a detention camp and no young person (between the ages of 16 and 19) can be sentenced to imprisonment if they can be suitably dealt with in another way (section 72 of the Juveniles Act).

\(^{82}\) Chapter 184 of the Laws of Zambia.

\(^{83}\) Lands Tribunal Act (No. 39 of 2010).

\(^{84}\) Chapter 194 of the Laws of Zambia. Prior to this the jurisdiction of the tribunal was so limited that in *Oduyeni and others vs The Commissioner of Lands*, Appeal No. 130 of 2000, the Supreme Court stated that ‘the Lands Tribunal has no jurisdiction to order cancellation of Certificate of Title in land matters. In terms of the Lands and Deeds Registry Act (Chapter 185 of the Laws of Zambia), the jurisdiction to order cancellation of the Certificate of Title Deeds lies with the High Court and not with the Lands Tribunal. The Lands Tribunal can only recommend cancellation. This is what in effect we said in *Mwangala vs Nsokoshi and another*, Appeal No. 29 of 2000. Although the Lands Tribunal was correct in doing substantial justice, their power is limited to recommending to the Commissioner of Lands as to what to do with a Certificate of Title Deeds in issue and not to order cancellation of the same.’ With the enactment of Act No. 39 of 2010 this is no longer the position.

\(^{85}\) The Chairperson, Deputy Chairperson and the representative of the Attorney-General’s Chambers are appointed in consultation with the Judicial Service Commission.

\(^{86}\) Section 5.
The Lands Tribunal has jurisdiction to:

- Inquire into and make awards and decisions in any dispute relating to land under the Lands Act, the Lands and Deeds Registry Act, the Housing (Statutory and Improvement Areas) Act or any other law;
- Inquire into and make awards or decisions in any dispute relating to land under customary tenure;
- Inquire into and make awards or decisions relating to any dispute of compensation to be paid in relation to land under the Lands Act, the Lands Acquisition Act or any other law;
- Inquire into and adjudicate upon any matter affecting the land rights and obligations under the Lands Act, of any person or the Government;
- Hear and determine appeals against a direction or decision of a person in authority relating to land under the Lands Act, the Lands and Deeds Registry Act and the Housing (Statutory and Improvement Areas) Act;
- Make orders for the rectification of entries made in the lands register;
- Make orders for the cancellation of certificates of title that it considers to have been erranously issued, to have obtained fraudulently, or that it otherwise considers necessary to cancel;
- Make any declaration that it considers approriate and issue any order for the implementation of the declaration;
- Subject to the State Proceedings Act, grant injunctive relief or any other interlocutory relief that it considers appropriate; and
- Perform such act and carry out such functions as may be prescribed under any other written law.

The tribunal also has a registrar appointed by the Judicial Service Commission and who should be a person with not less than five years legal experience. The registrar issues summons, keeps all records of the tribunal, keeps or causes to be kept records of all orders and judgements of the tribunal and has custody and keeps account of all moneys and fees paid to the tribunal. The registrar may also determine interlocutory applications, and appeals from the decisions of the registrar lie to the chairperson, vice-chairperson, and in the absence of both to the representative of the LAZ. An order of the tribunal is enforced as if it were an order of court. Appeals from the lands tribunal lie to the High Court thereby ranking it pari passu with the subordinate court. The Chief Justice may, under section 18, make rules by statutory instrument regulating the procedure of the tribunal and prescribing the procedure for the summoning and appearance of witnesses and other matters.

The revenue appeal tribunal

Another institution which discharges quasi-judicial functions is the revenue appeal tribunal which is established under the provisions of the Revenue Appeals Tribunal Act (No. 11 of 1998).

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87 Section 16 of the Lands Act (No. 39 of 2010).
88 Previously appeals form the Lands Tribunal were sent to the Suprem Court, which ranked the tribunal at the same level with the High Court.
The tribunal is constituted by three legal practitioners of not less than seven years standing recommended by the Judicial Service Commission and who have sufficient knowledge of and experience in tax matters; two qualified accountants certified as such by the Zambia Institute of Certified Accountants; and two persons from the business community. The members hold office for a period of four years from the date of appointment but may be eligible for reappointment for one further term.

The functions of the Tribunal are the following:

- To hear and determine appeals under the Customs and Excise Act in the following circumstances:
  - Where an importer of any goods is of the opinion that the goods are incorrectly classified by the Commissioner-General under any item of the Customs Tariff and the importer pays the amount demanded as duty by the Commissioner-General or furnishes security to the satisfaction of the Commissioner-General for the payment of the amount and the importer appeals to the Tribunal against such classification within three months after the payment of such amount or furnishing of such security;
  - Where a person who intends to import goods or manufacture goods within Zambia and is of the opinion that the goods of the class or kind that the person intends to import or manufacture, as the case may be, are incorrectly classified by the Commissioner-General under any item of the Customs Tariff and that person appeals to the Tribunal against such classification; or
  - Where the Commissioner-General has determined the value of any goods intended for importation into Zambia or manufactured within Zambia and any person aggrieved by such determination appeals to the Tribunal.

- To hear appeals under the Value Added Tax Act in respect of any of the following matters:
  - The registration, or the cancellation, of registration of a supplier;
  - The refusal to register a supplier;
  - The tax assessed to be payable on any supply of goods or services or on the importation of any goods;
  - The amount of any input tax that may be credited to any taxable supplier;
  - The application of any administrative rule providing for the apportionment or disallowance of input tax;
  - Any notice under section 25 of the Value Added Tax Act; and
  - The requirement of the Commissioner-General for the provision of security.

- To hear appeals against assessment of tax under the Income Tax Act; and

- To hear and determine any matter prescribed by the minister, by regulation, to be a matter against which an appeal may be made under this Act.

Appeals against the decisions of the tribunal lie to the High Court, which hears and determines any such appeal and may refer the matter back to the tribunal for rehearing, confirmation, reduction, increment or annulment of the assessment or decision determined by the tribunal. It may also make orders relating to costs and such other orders as may be required.
Court martial

A court martial is established under the Defence Act\(^9\) with power to try any person subject to military law under this Act for any offence and to award for any such offence any punishment authorised by this Act for that offence.\(^9\) The court martial employs similar procedures as the subordinate court, but differs in that it may hear cases that include the offences of murder and treason which offences are the preserve of the High Court.

It should be noted, however, that Article 94(7) of the Constitution gives the High Court jurisdiction to supervise any civil or criminal proceedings before any court martial and power to make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any court martial. The court martial is presided over by a president and not less than two other officers as members, except where an officer is to be tried or the only punishment or the maximum punishment which can be awarded in respect of the charge before the court is death.\(^9\) In such cases, the court martial is to be presided over by a president and not less than four members. A guilty verdict and sentence of a court martial is only treated as such after it is confirmed and a sentence of death may not be carried into effect unless it has been approved by the President or by the advisory committee established under the Constitution.\(^9\) The Defence Act gives the President power to review any confirmed sentence and thereby quash or substitute the finding, substitute valid for invalid sentences, remit or commute punishment made by the court martial.\(^9\)

Small claims court

The small claims court is a court established to adjudicate on liquidated claims not in excess of ZMK 20 million (ZMK 20,000 Kwacha rebased; approximately USD 3,847). The court also has jurisdiction to adjudicate proceedings for the following:

- The delivery of movable or immovable property that does not exceed the above amount (it is an option to the subordinate court or any other competent court);
- Debts that are due and owing;
- Rentals that are due and payable in respect of any premises;
- Possession against the occupier of any premises where the right of occupation per month does not exceed a sum specified by the Chief Justice;
- Relating to or arising out of a cheque or acknowledgement of debt signed by a debtor; and
- Counterclaims in respect of any of the above.

\(^{9}\) Chapter 106 of the Laws of Zambia.
\(^{90}\) Section 86.
\(^{91}\) Section 127 empowers the Chief Justice to appoint a judge advocate to act at any court martial upon application by the Commander.
\(^{92}\) Sections 102 and 107.
\(^{93}\) Section 108.
The procedures in the small claims court are simplified and representation by an advocate is not allowed. No appeal may be filed against a judgment or order of the court, but the judgment may be referred to a panel of three commissioners for a review if good cause is shown.

**Traditional courts**

Zambia has a dichotomous justice delivery system consisting of the formal and the informal.\(^4\) A mode of dispute settlement that has existed from the pre-colonial period and developed by indigenous Zambians, the traditional courts constitute an important (and the largest) part of the informal justice system in Zambia.\(^5\) With the advent of colonialism these were assigned the role of settling disputes solely among the indigenous people. In the post-independence era, the courts have been ignored and remain unrecognised, as a result of which they lack state-backed enforcement of their judgments. These courts deal with minor cases at community level and are reportedly functioning well, including in the application of restorative justice. The shortcomings of the traditional courts include the lack of state backing in the enforcement of their judgments, lack of funding, ill-defined legal status, lack of records of their proceedings/decisions and gender-based discrimination.\(^6\) Despite these shortcomings, the Mung’omba Constitutional Commission was of the view that the informal existence of these courts outside the official judicial system is a source of strength, in that they are not hampered by legal limitations or procedural rules and regulations that govern the judicial system.\(^7\)

Women and Law in Southern Africa Research and Educational Trust–Zambia (WLSA-Zambia) undertook a study on women and justice delivery problems and constraints. The study focused on finding out the capacity of justice structures to deliver justice as well as the impact of poverty on the system’s capacity to deliver justice. One key finding of the WLSA-Zambia study was that people, especially the poor, tended to feel comfortable with the types of dispute-resolution mechanisms they were used to in preference to formalised courts.\(^8\) The added advantage was that these informal mechanisms rarely required people to travel beyond their own areas of residence as was necessary in the case of accessing formal courts. Matibini observes that the poor prefer traditional courts also because they use languages they understand.\(^9\) Traditional courts had elaborate structures in some parts of the country. For example, in the Western Province, the system runs from headmen through to the Kings court.\(^10\) In general, the courts are based on

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\(^{4}\) Matrine Bbuku Chuulu, et al., 1999, *Justice in Zambia: Myth or Reality*, 25–26. The formal justice delivery system is characterised by formality and ceremony as discussed above and is regulated by written rules and convention and the informal is devoid of formality or ceremony and regulated by unwritten customary laws and practices.

\(^{5}\) There exist other forms of dispute settlement mechanisms such as the family, the church.

\(^{6}\) Matrine Bbuku Chuulu, et al., 1999. This study however claims that the traditional courts dispense justice on a basis of equality and promotion of human rights within the customary law interpretation. It was recently reported that the House of Chiefs has called on government to recognise traditional courts and strengthen their verdicts. Members of the House said that traditional courts will have more authority if government recognises them and strengthens their verdicts, which will result in the courts being respected more among people in rural areas (*The Times*, Saturday 19 June 2010).


\(^{8}\) Matrine Bbuku Chuulu, et al., 1999.

\(^{9}\) Patrick Matibini, *Access to Justice*.

\(^{10}\) Matrine Bbuku Chuulu, et al., 1999. The *Situngu* is a court presided over by a headman; the *Silalo*, presided over by a chief; and the *Saa Sikalo* presided over by the *ngambela*. In Monze district of the Southern Province, the headmen hold court and
value systems prevalent in each particular area and operate in rural areas. It is recommended that
the traditional courts should be recognised under the law and the leaders that preside over these
courts should be trained in human rights and the right to access justice.

Figure 1: The court structure in Zambia

C. Law reform

No Bill can become law without being passed by the National Assembly and assented to by the
President. Before a Bill is passed into law, it goes through various stages in Parliament. There are
three types of Bills: Government Bills; Private Members Bills; and Private Bills. The first stage is a
presentation stage when the Bill is read for the first time in the House. No debate takes place and
the Speaker refers the Bill to the relevant committee. The purpose of doing this is to subject the
Bill to detailed scrutiny. The Committee carries out consultations with various stakeholders after
which it reports to the House. There is no set time limit within which a Bill should be published
before being introduced in the House.\footnote{However, under Article 79(2)(a) of the Constitution, a Bill for the alteration of the Constitution should be published in the Government Gazette for not less than 30 days before the First Reading. This requirement applies to Bills that seek to amend the Constitution.} The second reading is the most important stage in the
legislative process. At this stage, the principle behind the Bill is debated in detail. The member
responsible for the Bill reads a prepared speech which gives detailed explanations of what is in
the Bill and its implications and (s)he outlines the advantages and disadvantages as perceived by
him/her. This is followed by a general debate on the Bill, which is informed by the report of the
relevant committee on the Bill. During the debate, unless one has been misquoted or one needs
to clarify a point made earlier, a member speaks only once to ensure that as many members as
possible have an opportunity to contribute to the debate. The only exception to this rule is that
the initiator of the Bill reserves the right to wind up the debate.

\footnote{However, under Article 79(2)(a) of the Constitution, a Bill for the alteration of the Constitution should be published in the Government Gazette for not less than 30 days before the First Reading. This requirement applies to Bills that seek to amend the Constitution.}
At the end of the debate, the Speaker puts the question to the House whether the Bill should be read a second time. Members indicate by a yes or no vote. If the yes votes are in the majority, the Speaker orders the Bill to be read a second time. If, on the other hand, the ‘no’ votes are in the majority, the Bill is withdrawn and it cannot be reintroduced during the same session. If there is a dispute as to which votes are in the majority, a division is called. If the yes vote is in the majority the bill is read for the second time and referred to the committee stage of the whole House. The committee examines the Bill in detail, clause by clause. Members are free to speak more than once and may introduce amendments provided such amendments are compatible with the Bill. The committee stage is chaired by the Deputy Speaker or the Deputy Chairman of Committees. The next stage is the report stage. This is in practice similar to the committee stage except that here only additional amendments to the Bill not moved at the committee stage, and not clauses, are considered. If a Bill has not been amended at committee stage, the third reading is promptly proceeded with. The report stage affords members an opportunity to make further amendments of which notice would have been given. During this stage, the Speaker presides over the proceedings.

The next stage is the third reading where the Bill is reviewed in its final form and no debate takes place. When the question has been put and agreed to, the Bill is deemed to have been passed and thereafter is presented to the President for assent after three days from the date of the third reading of the Bill. If the President gives his/her assent to the Bill it becomes law (an Act of Parliament) and takes effect immediately after it is published in the Government Gazette. The President can, however, withhold his assent to any Bill, in which case the Bill is returned to the National Assembly. Such a Bill is returned to the House with a message for the National Assembly to reconsider the Bill and if the National Assembly thereafter passes the Bill on a motion supported by a two-thirds majority, the Bill is again presented for assent to the President. When a Bill is again presented to the President for assent, the President should assent to the Bill within 21 days of its presentation, unless (s)he sooner dissolves Parliament. The legal department at Parliament monitors the progress of Bills in the Parliament, the presidential assent and the publication of the Act in the Government Gazette. Members who may want to follow the debate on any Bill can check with the legal department for dates and days from the Bill's register and thereafter can follow daily parliamentary debates.

The Ministry of Justice (MoJ) is responsible for law revision. It receives proposed draft amendments or new legislation from concerned ministries and the Zambia Law Development Commission (ZLDC). The ministry reviews the legislation, passes it through Cabinet and presents it to Parliament. The country has a permanent Law Reform Commission. The ZLDC is established by an Act of Parliament. Said Act repealed the Law Development Commission and Institute of Legislative Drafting (No. 5 of 1974). Under section 4(i) of the Act, the ZLDC is

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102 In the case of a Bill to amend the Constitution, when the question is put by the Speaker that the Bill be read a second time, a vote is immediately conducted and the Bill requires the support of at least two-thirds of the total membership of the House on second reading.


104 Chapter 32 of the Laws of Zambia.
required to research and make recommendations on the socio-political values of the Zambian people that should be incorporated into legislation; the anomalies that should be eliminated on the statute book; and new and more effective methods of administration of the law and the dispensation of justice that should be adopted and legislated.\textsuperscript{105} However, the ZLDC does not have draftspersons and after making recommendations has to hire draftspersons from the MoJ to draft the Bills.

While it is not clear how many of the recommendations of the ZLDC are accepted by government and enacted into law, it is imperative that the ZLDC be authorised to submit copies of their recommendations to Parliament or to a parliamentary committee. This will enhance the legislatures check over executive action or lack of it in respect of the reform process. It is also imperative that the ZLDC have its own legislative draftspersons authorised to draft legislation. The recommendations of the ZLDC should be widely publicised in a deliberate dissemination programme and an interactive and up to date website should be set up.

There has not been a systematic process of review to ensure that national laws have been brought into conformity with the provisions of international treaties to which the state is a party. However, the country has in the recent past undertaken audits to ascertain the extent of domestication of the international treaties. The country has treaded slowly in domesticating international instruments and has in the past expressed its reluctance. Responding to a recommendation by the Mwanakatwe Constitutional Review Commission for the domestication of international instruments on women’s rights, government stated that women’s rights already exist in substance in the Constitution, the Marriage Act, Employment Act, Intestate Succession Act, Industrial and Labour Relations Act and various customary laws.\textsuperscript{106}

It is recommended that a comprehensive mapping exercise should be undertaken by the Human Rights Commission (HRC) to ascertain the extent of domestication of the international and regional human rights instruments. The HRC should be the key custodian of this information that should be available on a constantly updated website and accessible to all interested parties.\textsuperscript{107} Further, the Constitution should provide that international instruments to which Zambia is a state party should be incorporated into domestic laws through legislation in order to be enforceable.

It is further recommended that lawyers need to cite international human rights instruments more in their submissions to courts in relevant cases to push courts to begin to make reference to the instruments. A deliberate training programme on human rights instruments and the state’s obligations ensuing there from needs to be instituted in the judicature or for adjudicators. International human rights law should also be made a compulsory course in the training and curricula of lawyers at the Bachelors level as well as for Police officers at the police training academies.


\textsuperscript{107} E.g. while unconfirmed information indicates that mapping of the extent of domestication of instruments relating to the rights of children has been undertaken by the United Nations Children’s Fund (UNICEF), of the ICCPR by the Governance Secretariat and of the CEDAW by the Ministry of Gender, these reports were not accessible to the reporter and are probably inaccessible to the general public and other users.
The applicant and seven others,\textsuperscript{108} including the former Republican President, Dr Kenneth Kaunda, were charged in a magistrate’s court with unlawful assembly contrary to section 5 of the Public Order Act. The police were entitled to reject the application, or if they decided to allow the said event, they would impose conditions. Among these conditions persons needed to be vetted before addressing a public meeting and the matters to be discussed equally needed to be identified. Section 7 made it an offence to contravene section 5, which act was punishable by imprisonment of up to six months or a fine not exceeding 1 500 penalty units, or to both. The applicants argued that sections 5 and 7 of the Public Order Act were unconstitutional as they infringed the guarantees of freedom of expression and assembly in the Constitution. The magistrate’s court stayed the criminal proceedings until the constitutional issue was dealt with by the High Court. Although the High Court declined to declare the two sections unconstitutional, the Supreme Court, on appeal, struck down sections 5 and 7 of the Public Order Act for being unconstitutional as they infringed the freedoms of expression and assembly guaranteed by Articles 20 and 21 of the Constitution, respectively. This decision works to domesticate the rights enshrined in the ICCPR. Following the decision Parliament expeditiously amended the sections that require citizens to merely give notice of their intention to assemble and not to obtain a permit from the police. Although the police continue to abrogate the Public Order Act, this decision has helped citizens make their arguments successfully. The police are now fully aware that as long as they are given requisite notice of intention to assemble, the persons who have so given the notice are likely to do so. The amendment to the Act guaranteed the right of citizens to assemble and associate freely.

The emergence of multi-party democracy in 1991 came with much promise of enhanced protection of basic human rights, increased and improved access to justice and commitment to the rule of law. However, it is one thing to advocate and champion for the rule of law and another thing altogether to make that law and make it accessible to the people. Zambia in the third republic has grappled with how to achieve this idyllic position. The 1991 Constitution promised the start of a profound political process that would transcend the simple adoption of a new Constitution, but birth the existence of a political culture that would turn the Constitution into a living and lived experience by both the government and the governed. This process was still ongoing at the time of going to press.

A. Constitutionalism and the rule of law

The attainment of a democratic dispensation and adopting a democratic Constitution has been undermined by the failure to entrench constitutionalism, leading to the existence of a Constitution without constitutionalism. Although constitution-making in Zambia has been consultative, the views of ordinary citizens that have made submissions are to a large extent disregarded or ignored. The Constitution, therefore, remains a rhetorical document only of interest to constitutional experts, political players and the elite. The challenge the country has faced has been the failure to rid itself of the remnants of past bad governance which have found new forms in the new democratic dispensation.109 As a country whose history is rooted

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in traditional Chieftaincy and the trappings that go with this institution of subordinating self to authority and the sanctions therefrom, the old ways of practices and institutions have apparently been too difficult to abandon. This further resulted in a culture where there was nothing wrong with the establishment or order of things and loyalty continued to flow as long as benefits existed.

The context described above perhaps explains the evolution of events of 1996 when the debate for a third term for the former President F.T.J. Chiluba arose. A well funded scheme was orchestrated aimed at influencing public opinion to amend both the Movement for Multi-party Democracy (MMD) and Republican Constitution to pave way for a third term for President Chiluba. While the President was conspicuously quiet, it did not require an analyst to understand that he tacitly approved the campaigns mounted by various ‘rented groups’. However, the campaign was vehemently opposed by civil society groups, labour unions, student unions and the women’s movement. The independent media also ran commentaries and editorials against the proposed third term. The campaign further suffered a setback when some senior members within the MMD opposed the campaign. The Lusaka MMD provincial executive committee went public to reject the proposal. This was followed by public rejection of this position by 21 Members of Parliament who included a number of Cabinet ministers as well as the Vice-President.

From what transpired, the police and public media were clearly used to promote the President’s pro-third term agenda. The police ensured that it was difficult for the anti-third term campaigners to organise public rallies and meetings. In some instances, public rallies were disrupted and stopped. To the contrary, those in support of the third term could demonstrate unfettered and were provided police protection although they rarely met the criteria for convening public functions. This undermined the rule of law and constitutionalism. A ‘green ribbon’ advocacy campaign was hatched. All those who opposed the campaign against the third term wore a green ribbon for the period of the campaign. It was also agreed that every day at 5pm all motorists would blow the horns of their vehicles while non-motorists had acquired whistles which they too blew at the same hour. As the pressure mounted, Chiluba eventually dissolved the Cabinet, appointed a new one and yielded to the people’s demands by abandoning the quest for a constitutional amendment to permit him to serve for a third term as President of Zambia.

The most notorious disregard for the law has been in respect of the Public Order Act. As indicated earlier, following the landmark decision of Mulundika and seven others vs The People, three ministers, headed by the then Vice-President and number two man in the executive, led a vicious attack in Parliament on the Supreme Court for declaring sections 5(4) and 7(a) of the Public Order Act unconstitutional. Thereafter, the legislature speedily amended the Act, adding to it a new section whose effect was to give discretion to the Police to decide who should exercise their constitutionally guaranteed rights of freedom of assembly. To date, this provision is used by the government to change arbitrarily the time and date of rallies, particularly of opposition

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110 Lee M. Habasonda, *Presidentialism and Constitutionalism in Africa*.
111 Ibid.
112 Chapter 295 of the Laws of Zambia.
113 See Case Study 1.
114 Public Order (Amendment Act) 1996.
political parties and non-governmental organisations (NGOs), including during by-election campaigns.\textsuperscript{115}

The composition of the legislature can determine the courage and frankness of its members to debate freely and detect irrational ideas in the policies that fall under its scrutiny. During the period of the single-party system (1973–1991) the Zambian legislature was composed of 125 elected members and 10 presidential nominees.\textsuperscript{116} During the early part of the second Republic, checking the correctness of government policy ideas before they could be issued in the form of Parliamentary Acts was done by a mechanism of passing Bills through various stages, for instance through the decentralised parliamentary committees. Also during question time, the role of backbenchers in screening policy ideas from the front bench was crucially important. Initially backed and protected by the National Assembly Powers and Privileges Act,\textsuperscript{117} backbenchers were free to criticise the government or vote the way they wanted. On many occasions, Government Bills seen to be inimical to the interests of the majority of Zambians were rejected. Consequently, Parliament was seen by the United National Independence Party (UNIP) Central Committee as a forum for an opposition group within the single party system. The government therefore worked out a plan, which eventually eroded policy scrutiny in the legislature. President Kaunda appointed three quarters of legislators as district governors, ministers of state, Cabinet ministers and members of the central committee of the party.

\textit{Table 1: Number of front and back bench Members of Parliament, 1974–1991}\textsuperscript{118}

<table>
<thead>
<tr>
<th>Year</th>
<th>Front bench</th>
<th>Back bench</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>42</td>
<td>87</td>
</tr>
<tr>
<td>1977</td>
<td>45</td>
<td>86</td>
</tr>
<tr>
<td>1979</td>
<td>41</td>
<td>75</td>
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<tr>
<td>1985</td>
<td>39</td>
<td>64</td>
</tr>
<tr>
<td>1991</td>
<td>77</td>
<td>46</td>
</tr>
</tbody>
</table>

The figures in Table 1 show that there has been progressively a steady reduction of backbench representatives between 1974 and 1991. These could not, therefore, defeat the government on any motion. Even those representatives appointed to state positions outside the Cabinet felt bound by the doctrine of collective responsibility to support the government on any issue brought up in the legislature for discussion and approval. Thus, in several instances, the executive ignored the views of the few backbench representatives and went ahead to make its own decisions. For example, in 1980 the Local Government Bill was passed despite vehement opposition by backbenchers.\textsuperscript{119} Similarly, a Private Member’s Motion which urged the state to reduce the price

\textsuperscript{116} Zambian Constitution 1973, Article 63.
\textsuperscript{117} Chapter 17 of the Laws of Zambia.
\textsuperscript{118} National Assembly Parliamentary Debates 1974–1991.
of fertilisers was overridden by the government which overruled the minority backbenchers.\footnote{120}

Following the introduction of multi-party politics, the MMD had a majority in the national legislature between 1991 and 2001. The MMD could, therefore, enact legislation that promoted its own interests. Scrutiny of their actions became seriously stifled by the fact that opposition parties were in a minority. For instance, the opposition parties opposed a government policy that related to the pace and scale of privatisation of parastatals. They also raised questions relating to the eligibility for contesting the Republican Presidency and the policy on the electoral process which involved foreign Israeli company NIKUV. In addition, ‘Parliament enacted the much criticised Constitution of Zambia (Amendment) Act, 1996’,\footnote{121} that prevented Kaunda’s deputy, Chief Inyambo Yeta, from contesting any state position unless he first resigned his position as chief.

The legislature also passed the Electoral (Amendment) Act of 1996, which brought forth the Electoral Commission. Other controversial pieces of legislation enacted by the MMD-dominated legislature were the Land Act of 1995, which evoked an outcry from traditional rulers, NGOs and opposition parties and was perceived as one that granted the head of state too much power over land; the State Security Act\footnote{122} was enacted to deal with espionage, sabotage and other activities prejudicial to the interests of the state. In 1993 three reporters of The Post, an independent newspaper, were arrested and charged with espionage under the Act. The three accused published a story which exposed a government plot to hold a snap referendum to decide on the contentious constitutional clauses.\footnote{123} They were duly acquitted by the court which stated in its judgement:

> On proper construction of State Security Act it seems to me that not everything classified by the authorised officer necessarily becomes a classified matter under the State Security Act ... a Referendum is nothing more than an election and there can be no secret about an election in these days of transparency, the revelation of which should invite the stiff penalties under the State Security Act. I think it would surprise many and even jar instincts to hear that in Zambia three nosey journalists have been imprisoned for 20 years for prematurely announcing government intentions to hold a Referendum to decide a thorny Constitutional issue!\footnote{124}


\footnote{122} Chapter 111 of the Laws of Zambia.

\footnote{123} The People vs Membe, Phiri and Mwape (1997) 1996//HP/38.

\footnote{124} Ibid.
B. Sanctions for executive violation of the law

There is an independent and impartial judiciary in civil matters and complainants have access to the High Court to seek damages for human rights violations under Article 28 of the Constitution by way of judicial review. However, one report indicates that there were problems enforcing civil court orders due to insufficient judicial resources. Interviews with two legal practitioners revealed that it is not easy to collect damages from the government after the court has made an award against it. One of the practitioners stated that the problem is aggravated because the law under the State Proceedings Act does not permit the levying of execution against the state, including district councils and a large number of other public institutions. He went on to say that, in his practice, he had obtained an award for damages for clients against a Council that have remained unpaid for many years as this is not a spending priority for the Council.

Nonetheless, the courts make judgments and rulings critical of the government and in several instances the courts have awarded damages in cases arising from police abuse, malicious prosecution and unlawful arrest. For example, on 31 August 2009, the Lusaka High Court awarded Patriotic Front (PF) party leader (now President) Michael Sata damages for malicious prosecution. In 2002, Sata was arrested and indicted for allegedly stealing two motor vehicles, but a magistrate acquitted him. In *F.T.J. Chiluba vs The Attorney-General*, the applicant appealed the decision of the High Court dismissing his application for judicial review of the decision of the National Assembly removing his immunity. He applied for an order of *certiorari* for the purpose of quashing the said decision of the National Assembly; an order of *mandamus* to oblige the National Assembly to reconsider the decision to sanction the prosecution of the applicant as former President of the Republic of Zambia in line with the provisions of Articles 43(3) of the Constitution and the rules of natural justice; and declaration that the resolution of the National Assembly to sanction the criminal prosecution of the applicant was *ultra vires* Article 43(3) of the Constitution, hence null and void.

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125 The legal provisions relied upon regarding judicial review is Order 53/14/19 of the Supreme Court Practice.

126 ‘Human Rights Report: Zambia’, 2009 *Country Reports on Human Rights Practices*. This order provides that the remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision-making process itself. It is important to remember in every case that the purpose of [the remedy of judicial review] is to ensure that the individual is given fair treatment by the authority to which he has been subject and that it is not part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. Thus, a decision of an inferior court or a public authority may be quashed (by an order of *certiorari* made on an application for judicial review) where that court or authority acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable, or where there is an error of law on the face of the record, or the decision is unreasonable, at [http://www.state.gov/g/drl/rls/hrrpt/2009/af/135983.htm](http://www.state.gov/g/drl/rls/hrrpt/2009/af/135983.htm) (accessed 15 May 2011).

127 Interview on 2 December 2011, names withheld.

128 Chapter 71 of the Laws of Zambia.

129 Interview on 2 December 2011, names withheld.


131 *Selected Judgments*, 2003.
Government officials including the head of state can be prosecuted for things done in the course of their public responsibilities.\textsuperscript{132} In practice however, few cases involving high-level public officials have been brought before the courts. A number of permanent secretaries and heads of public corporations have been investigated by the Anti-Corruption Commission but few of them have been charged with any offence.\textsuperscript{133} In 2001, three ministers diverted a sum of ZMK 2 billion from the National Assembly account to the MMD Convention. A tribunal established by the Chief Justice under the Parliamentary and Ministerial Code of Conduct Act,\textsuperscript{134} found the Minister of Works and Supply, Godden Mandandi, and the Minister of Home Affairs, Peter Machungwa, guilty. However, the Minister of Finance, Katele Kalumba, who had authorised the transfer of funds, was never prosecuted.\textsuperscript{135}

In the case of the head of state, he or she can only be prosecuted after his immunity is lifted.\textsuperscript{136} A good example is the indictment of the late former President F.T.J. Chiluba after his immunity was lifted. On 11 July 2002, the President of the Republic of Zambia addressed the National Assembly. In that address, allegations of stealing USD 500,000 from the ZAMTROP (Zambia Trans Overseas for the Office of President) Intelligence Account – a government account – were made. The President also discussed, in his address, the possibility of the National Assembly lifting the immunity of the appellant. On 16 July 2002, the National Assembly met, and considered the removal of the former President’s immunity. After a lengthy and heated debate, the National Assembly passed a resolution, in exercise of its powers under Article 43(3) of the Constitution, removing the appellant’s immunity. The resolution was in the following terms:

That in terms of Article 43(3) of the Constitution of Zambia, this House do resolve that Mr F.J.T. Chiluba who has held, but no longer holds, the office of President may be charged with any criminal offence or be amenable to the jurisdiction of any court, in respect of any act done or omitted to be done by him in his personal capacity while he held office of the President and that such proceedings would not be contrary to the interests of the State, and further that the immunity available to him be removed.

\textsuperscript{132} E.g. former Minister of Works and Supply, Godden Mandandi, was prosecuted for stealing ZMK 250 million from the National Assembly. See ‘ACC to engage lawyer to prosecute Mandandi’s case’, Zambia Daily Mail, 5 March 2002. Three other ministers and one Member of Parliament lost their parliamentary seats after they were found guilty of stealing public funds by judicial tribunals set up by the Chief Justice under the Parliamentary and Ministerial Code of Conduct Act. Legal Affairs Minister, Remmy Mushota, and Patrick Katyoka, Mandevu MP (ZMK 210 million scandal) both lost their parliamentary seats. See ‘Mushota is fired and that’s final’, The Times of Zambia, 8 August 1996.

\textsuperscript{133} DPP assured me he’d arrest Health Minister’, The Post, 1 July 1994.

\textsuperscript{134} Chapter 16 of the Laws of Zambia.


\textsuperscript{136} Article 43 of the 1996 Constitution provides that: no civil proceedings shall be instituted or continued against the person holding the office of President or performing the functions of that office in respect of which relief is claimed against him in respect of anything done or omitted to be done in his private capacity; a person holding the office of President or performing the functions of that office shall not be charged with any criminal offence or be amenable to the criminal jurisdiction of any court in respect of any act done or omitted to be done during his tenure of that office or, as the case may be, during his performance of the functions of that office; a person who has held, but no longer holds, the office of President shall not be charged with a criminal offence or be amenable to the criminal jurisdiction of any court, in respect of any act done or omitted to be done by him in his personal capacity while he held office of President, unless the National Assembly has, by resolution, determined that such proceedings would not be contrary to the interests of the State.
The remedy of judicial review of executive action is thus well established in Zambian law. Apart from resorting to court action to challenge administrative decisions, aggrieved individuals can utilise administrative remedies. Service regulations also permit those dissatisfied with a decision made by an officer to appeal to his superior for redress in accordance with the chain of command existing in a particular department or ministry.\textsuperscript{137} There have been several cases where citizens have sued the government. Furthermore, under the Commission for Investigations Act,\textsuperscript{138} complaints can be made to the Commission against public officers who abuse their power or authority or practice nepotism, etc. Similarly, the Human Rights Commission is empowered to investigate human rights violations as well as maladministration of justice and make appropriate recommendations for redress.\textsuperscript{139}

Reports of the Commission for Investigations and the Human Rights Commission indicate that people have been utilising these institutions to challenge decisions made by individual members of the executive.\textsuperscript{140} The Commission for Investigations came into existence in 1973. The Commission redresses grievances submitted by members of the public and employees in the public service which arise as a result of maladministration or abuse of office by public organisations. A shortcoming of the current law is that the Constitution does not guarantee the right to administrative justice.

\noindent \textbf{C. Amnesties and pardons}

The Constitution of Zambia grants discretionary power to the Director of Public Prosecutions (DPP) to institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence alleged to have been committed by that person; to take over and continue any such criminal proceedings as have been instituted or undertaken by any other person or authority; and to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.\textsuperscript{141} This power has been criticised widely by the public and media. Although this is a constitutional power, the DPP’s office has often come under fire in Zambia because of what the public perceives as political interference in the exercise of its prosecutorial discretion. Prominent among the cases that attracted this perception in some quarters was the case involving former Permanent Secretary in the Ministry of Health, Dr Kashiwa Bulaya. The case of Dr Bulaya was almost not prosecuted after the DPP stopped proceedings through a \textit{nolle prosequi}, arguing that the evidence against the accused was not strong enough to secure a conviction. This sparked

\textsuperscript{137} See Cuthbert Nyirongo vs The Attorney-General 1991/SCZ/10 (right to a passport); Phyllis Kasempa vs The Attorney-General 1994/HP/4916 (discrimination on grounds of sex); William Banda vs The Attorney-General 92/HP/1005 (freedom of assembly, association and expression).
\textsuperscript{138} Chapter 39 of the Laws of Zambia.
\textsuperscript{139} Human Rights Commission Act, section 9(a) & (b).
\textsuperscript{140} E.g. in 2004, the commission handled a total number of 825 out of which 526 were concluded. This high success rate was partly attributed to the on the spot resolution of cases during the commission’s provincial tours. However, the commission does not have a policy document. In addition, a strategic plan for the commission was developed to cover the period 1998–2003, but it was never implemented. Consequently, the restructuring process in the commission never took place.
\textsuperscript{141} Article 56.
such an unprecedented outcry from civil society and the public that the DPP reversed his decision and the matter proceeded to trial which ended with the conviction of Dr Bulaya and a sentence of five years’ imprisonment. Such blatant interference in the operations of the DPP’s office demeans the integrity of the office holder, who is consequently exposed to public scorn and ridicule, and the credibility of the whole judicial system which thrives on the integrity of the men and women who dispense justice, is undermined.\textsuperscript{142}

Some petitioners to the Mung’omba Constitutional Review Commission suggested that the DPP should be required to apply for leave to enter a \textit{nolle prosequi} and provide sufficient grounds to the court.\textsuperscript{143} On the issue of \textit{nolle prosequi}, the Mung’omba Constitutional Review Commission noted that it is common practice in Commonwealth countries to reserve this power to the DPP. They went on to state that the power of the DPP to issue a \textit{nolle prosequi} is intended for the protection of the public interest. This power has, however, persistently been abused, causing inconveniences and anxieties to individuals who are made to live with the threat of arrest indefinitely. While the power of entering a \textit{nolle prosequi} is necessary to be vested in the DPP, this power should be used sparingly and in good faith since past experience has shown that there has been persistent abuse of this power. The Commission was of the view that public interest can still be protected, albeit subject to some extent to the DPP’s discretionary powers.

Articles 44 and 59 of the Constitution also give the President the power to pardon or reprieve offenders either unconditionally or subject to such conditions as he may prescribe. Article 60 of the Constitution establishes an advisory committee on the prerogative of mercy which shall consist of such persons as may be appointed by the President. It also provides that no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence. In September 2011, President Sata pardoned all the people from the Western Province that were arrested in connection with the Mongu riots over the Barotseland Agreement.\textsuperscript{144} He also pardoned 2,318 prisoners on Africa Freedom Day although some inmates have cried foul for being left out despite their good conduct in prison.\textsuperscript{145} These are presidential powers and it was submitted by petitioners to the Mung’omba Constitutional Review Commission that this authority contributes to the excessive power given to the office of President.\textsuperscript{146}

\textsuperscript{142} See http://www.trulyzambian.com. Although the Constitution provides that the DPP shall, in the exercise of the powers conferred on him not be subject to the direction or control of any other person or authority; the Attorney-General has power under Article 56(7) of the Constitution to require the DPP to act in accordance with any directions of the Attorney-General. The comments made by the Attorney-General and the President in support of the \textit{nolle} worked to justify the allegation that the DPP had acted under the direction of the executive and the office of DPP was thereby interfered with. See ‘Zambia: levy u-turns on Bulaya’, \textit{nolle at allAfrica.com/stories/200506150037.html} and ‘Kunda and integrity of the judiciary’, at www.postzambia.com/post-read_article (accessed February 2013).

\textsuperscript{143} Report of the Mungomba Constitutional Review Commission, xlvii.


\textsuperscript{145} ‘Investigate corruption allegations of pardoned prisoners’, http://www.daily-mail.co.zm/?p=5141 (accessed 10 June 2012).

2. Resident Doctors Association of Zambia and others vs The Attorney-General

This case\textsuperscript{147} was an appeal by the petitioners against the decision of the High Court which decided that they had breached Section 6(7) of the Public Order Act which prohibited the holding of public meetings, processions or demonstrations, where the police notify the conveners that they cannot adequately police such events and the denial by the High Court to award them damages after having found that the police had violated the Act. In a well reasoned decision, the Supreme Court found that the learned trial judge properly directed himself on the law and facts and properly found that the police action and conduct in rejecting the application and stopping the march was in breach of the Public Order Act and that it violated the petitioner’s freedoms of expression, assembly and association, as guaranteed in articles 20 and 21 of the Constitution. The Supreme Court went on to say that the rights to free speech and freedom to assemble are not only fundamental, but central to the concept and ideal of democracy; that it is accepted the world over that the enjoyment of these rights is not absolute; and that they have to be balanced against the public interest in the laws and regulations restricting these rights. It also unequivocally stated that, Courts, as final arbiters, when interpreting the constitution and the laws made there under which confer the freedoms, determine the content and parameters of these rights. While it cannot be denied that not all manner of speech and assembly are acceptable, there is need for the court, when interpreting provisions conferring fundamental rights, to adopt an interpretation which does not negate the rights. The Court, in a classical show of its indignation, awarded both general and exemplary damages to the petitioner, stating that ‘state action which impedes the citizen’s enjoyment of their constitutional freedoms should not be condoned’. The state obliged and paid the damages awarded to the petitioners. The action of the police was blatant disregard for the law which had been amended following the decision of Mulundika discussed in Chapter 1.

\textsuperscript{147} Resident Doctors Association of Zambia and others vs The Attorney-General, SCZ Judgment No. 12 of 2003.
The planning and management of the justice system in Zambia was greatly enhanced by the country’s return to national development planning. The return to a multi-party political system led to calls for long-term national planning which had not been the norm during the one-party era.\textsuperscript{148} Prior to responding to this call by citizens, government put in place the National Capacity Building Programme for Good Governance in Zambia (NCBPGGZ) and later the Poverty Reduction Strategy Paper/Transitional National Development Plan (TNDP 2002–2005). The TNDP period saw the Ministry of Justice (MoJ) embark on policy formulation in the areas of prosecution and legal aid. These policy initiatives are broad-based in focus, in that they also target service providers outside the confines of the Directorate of Public Prosecutions and Legal Aid Board respectively.\textsuperscript{149} The National Prosecutions Policy was developed\textsuperscript{150} and the Legal Aid Directorate underwent institutional reform giving it administrative and financial autonomy. The period initially saw an independent Board appointed with the mandate of administering the Legal Aid Fund. Institutional reforms to improve the administration of justice also included the transformation in 2001 of the juvenile justice system into one conforming to international standards. Plans to extend court annexed mediation were commenced. The more effective discharge of justice has been boosted by a number of infrastructure developments at High Court.

\textsuperscript{148} Zambia was under one-party rule from 1973 to 1990 and all other political parties were banned. In 1991 the country reverted to multi-party politics where several political candidates from different political parties could compete for election to various positions.

\textsuperscript{149} The need for coordination between other entities such as the police, prisons and civil society actors became obvious as all these contribute to the justice sector. The policy framework therefore needed to include them.

\textsuperscript{150} This changed the public prosecutions in the country from a directorate where public prosecutors where located in two different institutions – the police and the chambers of the Director of Public Prosecutions (DPP) – to an entity that pull together all public prosecutors including those from the police under one authority.
subordinate, and local court levels. The National Long Term Vision 2030 (referred to as Vision 2030) was initiated in 2005. This was done through a participatory and consultative process that covered all the 72 districts of the Republic.

A. Strategic planning and financial management

Planning for the justice sector

In 2006, Zambia developed Vision 2030. It is Zambia’s first ever written long-term plan, expressing Zambians’ aspirations by the year 2030. It articulates possible long-term alternative development policy scenarios at different points which would contribute to the attainment of the desirable social economic indicators by the year 2030. One of these is improved well-being underpinned by core values such as democracy and respect for human rights by 2030 while seeking justice alongside development. Vision 2030 acknowledges that partly due to economic decline coupled with increasing population, the provision of security and the rule of law has deteriorated in the country. One of the sector issues of Vision 2030 is therefore governance and the goals for this sector include improved access to justice and enhanced human rights awareness.

Vision 2030 is being put into operation through five-year development plans, the first of which was the Fifth National Development Plan (FNDP 2006–2010), and annual plans and budgets, marking a departure from the past practice of preparing and implementing medium-term plans. The FNDP located justice institutions in a chapter on governance that included the Access to Justice Programme (AtoJP), which started as a government-led project with Danish International Development Agency (DANIDA)/Royal Danish Embassy (RDE) support. Prior to the FNDP, the focus of the AtoJP was solely on the criminal justice system. Although the Sixth National Development Plan (2011–2015) does not have the governance chapter, governance is treated as a crosscutting issue and the AtoJP remains a priority area as a result of which there have been few changes to the programme. The main structure established to ensure

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151 In developing the FNDP, the government enlisted the involvement of all the major stakeholders, including civil society, cooperating partners and the private sector. District and provincial plans were developed through a consultative process that was facilitated by the Ministry of Finance and National Planning.

152 Improvement of access to justice for all was one of the objectives of the AtoJP in the FNDP. The strategies were to improve coordination and communication among justice institutions and other stakeholders; capacity building and retention of personnel; develop Courts and other infrastructure; ensure the autonomy, effectiveness and efficiency of Legal Aid Department, Administrator-General and Directorate of Public Prosecution; legislative process and policy framework affecting the administration of justice improved; decentralise Judicial Complaint Committee, Administrator-General; increase public awareness of human rights and criminal justice system; decentralise civil litigation, Administrator-General and Official Receiver, Legal Aids and of Directorate Public Prosecution; improve record management and information management; improve access to justice for the vulnerable, especially women and children; and capacity building for personnel in gender issues. See Fifth National Development Plan. The AtoJP is aimed at supporting these objectives by ensuring easier access to justice for all, including the poor and vulnerable, women and children. The purpose of the programme is to support the development of an effective and accountable Justice Sector that is capable of meeting the needs and interests of poor, vulnerable and marginalised people. See Access to Justice Programme Document, 2009–2011, May 2008.

153 It was the perception at the time that the shortcomings in this subsector had the worst impact on poor and vulnerable populations with respect to the delivery of justice. See Thomas Krimmel, Dick Chellah and Henry Kabinga, Capacity Assessment of the Access to Justice Institutions, Munich Advisors Group.

the coordination of initiatives under the governance chapter is the Governance Sector Advisory Group (GSAG), chaired by the permanent secretary of the Ministry of Justice (MoJ).\(^\text{155}\)

To assist the GSAG, committees were established including one on governance and monitoring and evaluation. A technical committee has the responsibility of planning, implementation as well as monitoring and evaluation of the AtoJP activities. It comprises task managers from the key five justice institutions: the Zambia Police Force, Legal Aid Board, DPP, judiciary and the Zambia Prison Service. The Governance Secretariat (GS) was later introduced as a separate entity within the MoJ, mandated with the implementation and monitoring of the various elements under the governance chapter in the FNDP.\(^\text{156}\) It reports to the parliamentary secretary and executes financial management functions for donor funds allocated to the AtoJP and other governance programmes. The GS is also chaired by the permanent secretary of the MoJ.

The GS also functions as secretariat for the GSAG and the AtoJP, including the Technical Committees under both groups. In addition the GS is the technical arm of the Public Sector Reform Programme Steering Committee (PSRPSC) on issues relating to overall governance coordination. The Danish government has assigned a technical advisor to work with the Zambian authorities in developing a programme to give effect to the National Development Plan’s aspirations in this regard. All these structures are supported by Planning Units made up of representatives from key departments such as finance, procurement and human resource.

The GS does not have a strategic plan as an institution but work plans and budgets for its administration are done within the DANIDA component of Facilitation and Coordination of Governance Initiatives. The judiciary, however, has a Strategic Plan and Development Programme. A reportedly comprehensive document that could be useful in charting the future course of the Zambian judiciary, the plan covers the period 2009–2013.\(^\text{157}\) The MoJ and Legal Aid Board also have strategic plans although the relationships of these plans to that of the judiciary, and to each other, are unclear. In terms of monitoring and evaluation, under the FNDP monitoring and evaluation chapter, the GSAG was required to monitor key performance indicators (KPIs) on an annual basis.\(^\text{158}\) Apart from the KPIs, the government, through the GS, is required to prepare the State of Governance Report and subsequent reports that are supposed to highlight the success and challenges of the governance programme as a whole.\(^\text{159}\)

Therefore for planning and monitoring the implementation of the AtoJP, the following structure has been established:

- Steering Committee, consisting of heads of AtoJP agencies for strategic policy setting and guidance across the AtoJP sector;

\(^{155}\) The advisory group brings together representatives from 17 public sector and civil society organisations, including from the legislative and judicial branches of government in an effort to coordinate work to improve Zambian governance. This enables participation of civil society in planning and implementation of the sector activities.

\(^{156}\) Initially, the GS was established as a project to oversee, coordinate and monitor initiatives relating to improved governance in Zambia. It has since been incorporated into the Ministry of Justice and fully operates under the ministry structures.


\(^{158}\) The Sixth National Development Plan provides for a similar arrangement.

\(^{159}\) Literature on the State of Governance in Zambia is still very scanty. A 2004 Governance National Baseline Survey was produced by the Governance Development Unit and a State of Governance Report, 2009, was published in 2010 by the Governance Secretariat. Although somewhat informative on AtoJP, the information is limited as the report covers the other governance thematic areas, i.e. constitutionalism, democratisation, accountability and transparency and Human Rights.
• Technical Committee (TC), consisting of Task Managers from the implementing AtoJP agencies for strategic planning, monitoring and supervision as well as coordination between the AtoJP sector institutions;
• Planning Units in each of the implementing agencies consisting of existing institutional bodies for planning and budgeting and including the Task Managers for intra-institutional coordination of AtoJP activities and integration into institutional administration and management; and
• Governance Secretariat (GS), funded primarily by the Zambian government, with the mandate to oversee, coordinate and monitor initiatives relating to governance reform programme including AtoJP.

This organisational structure has however failed to locate the AtoJP within the mainstream government programme and thereby engender government ownership. This is because generally, all government institutions are required to follow a three-year Medium Term Expenditure Framework (MTEF), which is a rolling plan. The Annual budget plan sets short-term targets and allocates funds for target achievement. The annual budget for government funds is done on the basis of annual work plans as per government’s Policy and MTEF. However, the donor funded sector activities are not included in the budget plans and are planned for separately. Further, all funds are subjected to the MoJ procurement process which is a bottleneck for the execution of the AtoJP and its set-up has led to serious frictions among the AtoJP institutions. In a Financial Management Capacity Assessment for the AtoJP commissioned by DANIDA in 2006, the level of accountability for donor funds to the judiciary could not be assessed as records were not availed. This was mainly due to weaknesses in record-keeping and general inefficiency in the financial management function. The institution subsequently received a high risk assessment level. This has led to calls for the GS to be turned into a department of the MoJ.

Financial support of the justice sector

Resource allocation is the preserve of the Ministry of Finance and National Planning (MoFNP) and Cabinet Office through the PSRPSC chaired by the Secretary to the Cabinet. The justice sector is therefore financed from funds appropriated by Parliament through the MoFNP and donor support. Annual appropriations to carry out the national budget originate in the MoFNP.
and are not significantly modified in the legislative process. In the case of institutions under the MoJ, recommendations are submitted to the ministry which submits its budget estimates to the MoFNP. These recommendations are modified to reflect the executive’s anticipated revenues and spending priorities and include amounts in the annual budget prescribing where the institution is to allocate funds that may be appropriated. Once an appropriation is enacted, the ministry determines the amounts and timing of releases of the funds. This procedure is largely administrative and experiences no political interference. Table 2 shows the national budget for principal justice sector agencies in 2009.

The justice sector is however not solely government funded but also receives support from donors largely through the AtoJP. In addition to the traditional financial support by DANIDA/RDE and the government, the AtoJP has been financed by Cooperating Partners (CPs) through the Joint Assistance Strategy for Zambia (JASZ, 2007–2010). The JASZ represents the CPs’ joint response to Zambia’s newly developed Vision 2030 and the FNDP. One of the priority responses of the JASZ was a better coordinated planning and budgeting process among the justice institutions to enhance the efficiency of justice, and increase the availability of funds to the sector.

President. This practice was cited with concern in a 2002 report by the International Commission of Jurists (ICJ), which noted allegations of substantial increases in judicial salaries by President Chiluba as a possible ‘attempt by the executive to influence the judiciary and undermine its independence’. See ‘Zambia, in ICJ, attacks on justice’, at http://icj.org/IMG/pdf/zambia-2.pdf (accessed 5 January 2012). The percentage of the total national budget to the justice sector could not however be established, but one report states that anticipated reductions in tax revenues caused the 2009 budget to reflect a number of reductions in government funding for the administration of justice. See James Michel, Margaret O’Donnell and Margaret Munalula, Zambia Rule of Law Assessment, 2009, USAID.

The ministry has departments structured along constitutional and statutory mandates. It has under it three statutory bodies, namely the Zambia Law Development Commission, the Zambia Institute of Advanced Legal Education, Administrator-General and Official Receiver and Legal Aid Board and some departments falling under the Attorney-General’s Chambers and Administration. The ministry also houses the Governance Development Unit created following the adoption of the National Capacity Building Programme for Good Governance in Zambia by Cabinet in March 2000.

This is applicable to the judicature. It however does not apply to the Zambia Police Force (ZP) and Zambia Prisons Service (ZPS). The two institutions are departments reporting to permanent secretaries under the Ministry of Home Affairs, but receive funding directly from the Budget Office of the MoFNP in line with their approved budgets, just like a government ministry. However, in addition to the central treasury funding, the ZP is a recipient of direct donor funding and the ZPS has access to the income earned from its productive enterprises. A capacity assessment of the AtoJP institutions established that the ZPS can have other sources of funding, specifically for foreign-funded projects. See Thomas Krimmel, et al., Capacity Assessment of the Access to Justice Institutions.

The JASZ was prepared in collaboration with the government and twelve bilateral donors together with the African Development Bank, the World Bank, the European Commission and the United Nations system.

Twelve bilateral donors together with the International Financing Institutions, the European Commission and the United Nations system are signatories to the JASZ. Vision 2030 (the National Long Term Vision 2030) is Zambia’s first ever written long-term plan, expressing Zambians’ aspirations by the year 2030. It articulates possible long-term alternative development policy scenarios at different points which would contribute to the attainment of the desirable social economic indicators by the year 2030. It is operationalised through the five-year development plans starting with the FNDP (2006–2010) and annual budgets. This marks a departure from past practice of preparing and implementing medium-term plans that were not anchored on a national vision.

This was intended to mitigate the challenges of coordination between the institutions involved in the justice sector which has been poor. One result of this is reduced access to justice with people often experiencing significant delays within the justice system. People’s, and particularly women’s, statutory and human rights continue to be undermined by the application of discriminatory customary laws in Local Courts. See Joint Assistance Strategy for Zambia (JASZ) 2007–2010.
Figure 2: Arrangement for funding of the justice sector

Table 2: National budget for principal justice sector agencies, 2009

<table>
<thead>
<tr>
<th>Function</th>
<th>Personal emoluments</th>
<th>Administration</th>
<th>Capital investment</th>
<th>Other</th>
<th>Total</th>
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<tr>
<td>Judiciary Headquarters</td>
<td>3,551,747</td>
<td>551,538</td>
<td>54,545</td>
<td>3,601,062</td>
<td>7,718,892</td>
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<td>Supreme court</td>
<td>194,220</td>
<td>499,194</td>
<td>16,364</td>
<td>143,477</td>
<td>853,255</td>
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<td>High Court</td>
<td>647,353</td>
<td>642,207</td>
<td>18,362</td>
<td>2,490</td>
<td>1,320,412</td>
</tr>
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<td>Subordinate court</td>
<td>2,535,161</td>
<td>673,212</td>
<td>296,007</td>
<td>532,533</td>
<td>4,289,057</td>
</tr>
<tr>
<td>Local court</td>
<td>6,989,452</td>
<td>594,589</td>
<td>347,284</td>
<td>8,342,392</td>
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<tr>
<td>Public Prosecutions</td>
<td>578,112</td>
<td>363,636</td>
<td></td>
<td>1,128,748</td>
<td></td>
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<tr>
<td>Legal Aid Board</td>
<td>78,996</td>
<td></td>
<td></td>
<td>78,996</td>
<td></td>
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<tr>
<td>Ministry of Justice</td>
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<td>2,194,294</td>
<td>36,160,841</td>
<td>53,502,131</td>
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<td>Police, law enforcement</td>
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<td>1,535,051</td>
<td></td>
<td>81,152,952</td>
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<td>Commission of Investigations</td>
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<td></td>
<td>714,906</td>
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<td>Prisons</td>
<td>144,464</td>
<td>200,018</td>
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<td>344,482</td>
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<td>Anti-Corruption Commission</td>
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<td>5,098,244</td>
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<td>Sheriff</td>
<td>101,179</td>
<td>45,818</td>
<td>18,200</td>
<td>165,197</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>164,216,448</td>
<td></td>
</tr>
</tbody>
</table>

169 Zambia Rule of Law Assessment.
170 James Michel, Margaret O’Donnell and Margaret Munalula, Zambia Rule of Law Assessment, 2009, USAID.
In September 2010, the government of the Republic of Zambia – represented by the MoJ, the Ministry of Home Affairs and the judiciary – signed a Memorandum of Understanding with the European Union (EU), the RDE and the German Technical Cooperation (GTZ), which will provide for their support to the justice sector from 2011 to 2013. Speaking on behalf of the Zambian government at the signing ceremony held in Lusaka, the Minister of Justice, the Honourable George Kunda, remarked that:

This is a very important development for all of our justice institutions in Zambia under the framework of the government’s Administration of Justice Development Strategy and Action Plan. Improved communication, cooperation and coordination amongst the Police, the Prisons Service, the judiciary, the DPP and the Legal Aid Board will mean easier and more equitable access to justice services for many more Zambians, especially the poor and vulnerable.

Speaking on behalf of the CPs, Dr Derek Fee, head of the EU delegation to Zambia, said at the same ceremony:

As Cooperating Partners, we have a keen interest in ensuring that administration of and access to justice are improved in Zambia. A functioning, fair and accessible system of justice is a foundation of every democratic state and we fully support the government’s current efforts in this regard. We are confident that our support will lead to more concerted efforts on behalf of justice sector institutions to ensure that this goal becomes a reality.

The judiciary has also been funded by the Investment Climate Facility for Africa in partnership with the Zambian government. The investment of USD 4.9 million is intended to empower the judiciary by providing court infrastructure, computerisation and an increase in the number of judges. The judiciary also raises some of its funding. It retains 100% of its fees, with 40% retained in the districts where they are collected (stations) and 60% remitted to headquarters. Monies raised from court fines may not be retained and are remitted to the Central Treasury. Salaries of Supreme Court and High Court judges are drawn directly from the Treasury in accordance with the Constitutional Emoluments Act, whereas emoluments of subordinate and local court magistrates and judicial staff are met through judiciary appropriations.

171 The Memorandum of Understanding reportedly provides the framework for support which sees the EU contributing EUR 6 million, DANIDA EUR 3.85 million and GTZ EUR 1.5 million to the programme over the next three years (2011–2013), at http://www.postzambia.com/post-read_article.php?articleId (accessed 5 January 2012).

172 It is reported that the strategic plan developed by the Zambian judiciary for 2009–2013 has an ‘indicative’ budget that is almost ZMK 40 billion more than the estimated amount expected to become available from the Zambian national budget. See James Michel, et al., Zambia Rule of Law Assessment.


175 Ibid.

176 Ibid.
Although the judiciary was de-linked from the executive arm of government, the MoJ continues to play a role in the affairs of the judiciary through the functions of its various constitutional offices and departments. In 2008, the Vice-President confirmed that despite the delinking of the judiciary from the executive, government will continue funding the judiciary through the MoFNP. As a result the judiciary continues to be faced with numerous financial difficulties and has repeatedly appealed to the government to seriously look at the funding to the institution. In 2012, the Chief Justice was quoted as observing that the current budget of the judiciary falls far too short of achieving its aims and objectives and that for a number of years, the trend has been that less than 70% of the approved budget is released. Lamenting this situation, the Chief Justice stated that 'we would at least like to see a situation that even the limited budgetary allocation once approved, the MoFNP could ensure that all the allocation is released in full'. The budgetary constraints have not only negatively affected projects and programmes of the judiciary, but also, according to Chief Justice Sakala, defeated the very concept of an autonomous judiciary. The lack of adequate funding has also been bemoaned by the Deputy Chief Justice, as well as other members of the judiciary, including Ndola High Court Judge Timothy Katanekwa who observed that, in spite of the judiciary continuing to operate effectively, the institution in the northern jurisdiction still faced a number of challenges with respect to funding, transport and infrastructure.

It is recommended that funding to the judiciary should not be accessed through the MoFNP but be appropriated through the Consolidated Fund to enhance independence of the institution. It is further recommended that the Judicature Administration Act be amended and enhanced so that it includes provisions on the independent administration and management of the judiciary.

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178 Ibid.

179 The Post, Tuesday 10 January 2012.

180 Ibid.

181 Ibid.

182 Ibid.


185 Currently the Judicature Administration Act (Chapter 24 of the Laws of Zambia) only provides that funds of the judicature shall consist of such moneys as may be appropriated by Parliament for the purposes of the judicature; be paid to the judicature by way of court fees or by way of such grants as the Chief Administrator may accept; or vest in or accrue to the judicature; and that the judicature may accept money by way of grants, whether or not subject to conditions, for the benefit of any activity, function, fund or asset of the judicature or any part thereof.
Budgeting

As the MoFNP still holds wide discretionary powers over the budget and supplementary budgets, there is little room for civil society participation in the planning and budgeting processes in the justice sector. Civil society organisations represented on the TCs of the AtoJP and the Human Rights and Democratisation Committee of the GS are invited to participate in the processes leading to the development of the five year national plan which includes budget estimates. The institutional-level grant-aided institutions such as the Legal Aid Board prepare a budget which is submitted to the MoJ and later to the MoFNP. These are not published for comments by the public. The National Annual Budget is however gazetted and published as a ‘Yellow Book’ with details of budgets by sector and region.

Budgeting for AtoJP activities is coordinated by a technical advisor housed in the judiciary and working with the AtoJP TC. The recipient institutions set their priorities which are harmonised in a work plan that sets outputs from a sector perspective. These plans together with the budget are then submitted to the Steering Committee for approval. Funding from the RDE to both components is by way of bank transfer into a Zambia National Commercial Bank (ZANACO) account from where payments are made in line with approved work plan activities. Two panels of signatories are in place with one panel consisting of GS staff and the other of MoJ staff.

Auditing

The constitutionally mandated Auditor-General audits all public offices and departments and submits an annual report to the President and the Parliament.\(^{186}\) The public accounts are subject to audit by the Auditor-General and the judiciary must submit an annual report to Parliament.\(^{187}\) Accounting, procurement, and internal control have been done by the institution itself. Weaknesses in the cashbook management of Zambian government funds have been found with respect to delays in bank reconciliation statements. The past Auditor-General’s reports have cited a number of public finance management issues in the judiciary. However, the fraud issues raised in the 2007 report have in the meanwhile been dealt with. With their own recruitment of staff, the financial management functions have been strengthened due to the presence of internal audit functions and functionaries.

A report on the capacity assessment of the AtoJP institutions indicates that the Excel Pastel ‘Partner’ Basic Accounting Package, originally designed as a small business solution, was installed in 2007 for the processing of transactions.\(^{188}\) Accounting staff had problems with the package and are now beginning to deal with a new advancement.\(^{189}\) The report recommended

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\(^{187}\) The annual audit of the accounts should be done for each institution by the Auditor-General, at the same time for government and donor funds.


\(^{189}\) The Pastel accounting package is very widely used in Zambia, but it does not provide for auditing assurance according to internationally accepted accounting standards. Its usage is largely in industry and commerce as it is tailored and structured for standard trading organisations and the technical expertise and support in Zambia tends to be in these areas. See Thomas Krimmel, et al., *Capacity Assessment of the Access to Justice Institutions*, 18.
that for the kind of accounting functions foreseen for the AtoJP, a more versatile package which adapts easily to specific reporting requirements and which can incorporate six institutions should have been used. The report further states that in setting up Pastel at the GS, the service provider allegedly worked largely with the MoJ Information Technology specialist but did not involve the users of the system sufficiently, which resulted in its remaining inoperable.  

B. Court administration

At the helm the administration of courts is the Chief Administrator appointed by the President on the recommendation of the Judicial Service Commission. Section 3 of the Judicature Administration Act provides that the Chief Administrator is responsible for the day-to-day administration and all functions relating to the expenditure of the judicature. He is also deemed to be the controlling officer by the Finance (Control and Management) Act. The tenure of the Chief Administrator is determined by the appointing authority (i.e. the President). The Judicial Service Commission appoints such other staff as may be necessary to assist the Chief Administrator in the performance of his functions. Such persons appointed under this section hold office on such terms and conditions as the Judicial Service Commission may determine with the approval of the President. The dismissal, disciplining and termination of appointment of any officer holding an office to which the Commission appointed him or her under this Act, is exercised by the Judicial Service Commission in accordance with regulations made by the Commission with the approval of the President.

Article 91(3) of the Constitution provides that the judiciary shall be autonomous and shall be administered in accordance with an Act of Parliament. The Judicature Administration Act that confers on the Judicial Service Commission the authority to appoint administrative staff of the judiciary does not give effect to judicial autonomy as espoused under the Constitution. This effectively makes the judiciary subservient to the Presidency in matters related to administration of the judiciary in general, the appointment of certain members of the Judicature and staff, terms and conditions of service and the exercise of disciplinary powers. The Service Commissions Act (which establishes the Judicial Service Commission) subjects the Judicial Service Commission to such general directions as the President may consider necessary and requires the Commission to comply, and is in direct conflict with the Constitution. Further, the Chief Administrator serves at the pleasure of the President.

The nature of training of administrative staff, such as clerks, court reporters and interpreters could not be ascertained as the staff responsible for human resource was unavailable at the time of data collection. However, press reports allege that the Zambian judiciary had previously encountered problems including inefficient case management and a lack of trained court staff.

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190 The Governance Secretariat was not interviewed to collaborate these findings or to indicate the current position.
191 Section 3 of the Judicature Administration Act (Chapter 24 of the Laws of Zambia).
192 Chapter 347 of the Laws of Zambia.
193 Section 4 of the Judicature Administration Act.
194 Section 5 of the Judicature Administration Act.
195 Chapter 259 of the Laws of Zambia.
196 Section 5 of the Service Commissions Act.
which led to delays in processing cases and dented confidence in the judicial system.\textsuperscript{197} Some reform programmes have been undertaken by the judiciary in the last two decades that focus on court administration. These include the computerisation of court systems and strengthening of court processes through a programme of education, including training on computer literacy and court case management system for judiciary staff. An interview with the Director of Court Operations indicated that plans to design a continuous training programme for staff have not been implemented due to lack of adequate funding.\textsuperscript{198} He bemoaned the fact that there was no training for either adjudicators or administrative staff.

\section*{Record-keeping}

Court records are kept in the registry of each court house and may be accessed by case number. The registry is manned by clerks who receive documents that are filed in the proceedings. After the case is set for hearing it is allocated (by the judge in charge who is responsible for case allocation) to a judge or magistrate and listed on a case list. Prior to the hearing date, the file is moved to the chambers of the judge or magistrate that is assigned to hear the matter by the marshal assigned to that court. The proceedings in the court were until recently recorded manually, by court reporters. However, this has begun to change with the computerisation of the courts. As a result the court records are more quickly available as they do not have to remain pending in the typing pool. Some 20 new court reporters were in training for the Zambian judiciary, alongside court reporters from other countries such as Tanzania to enable knowledge to be shared.\textsuperscript{199}

The first phase of the computerisation of the Judicial Court System was launched in March 2010. Zambia was the first African country to employ the usage of a computerised judicial system. Chief Justice Sakala commented that it was felt that technology was going to be an important ingredient to the change sought in the operations of the courts by improving the rate of disposal of cases and also improving the quality of judgements by having accurate records for all proceedings and on time for all citizens.\textsuperscript{200} Chief Justice Sakala also said the ‘Dream Project’ aims at reengineering the court processes in order to optimise the use of human resources and bring about change of management techniques by harnessing the potentiality of the available information and communication technology to its fullest extent.\textsuperscript{201}

The Human Rights Commission says, once completed, the project to computerise the judiciary in Zambia will speed up the process of administering justice in the country. Speaking in an interview, Commission Director Enock Mulembe says the computerisation of the judicial system will also provide a proper way of record-keeping thereby ensuring a fair dispensation of justice. He says detaining suspects for over 14 days without trial has always been the concern.

\begin{thebibliography}{9}
\expandafter\ifx\csname atAddendum\endcsname\relax\endinput\fi
\bibitem{197} Zambian judicial system undergoes modernisation, \textit{Times of Zambia}, Monday 13 December 2010.
\bibitem{198} Interview with Director of Courts, Mr Egispo Mwansa, on 31 May 2012.
\bibitem{201} Ibid. The programme will modernise 10 courtrooms and 13 registries in Lusaka, Ndola and Kitwe, as well as establish a commercial division in the Copperbelt region.
\end{thebibliography}
of the Human Rights Commission. Phase 1 of the project saw the computerisation of the Supreme, High and magistrates’ courts in Lusaka. It was made possible with a 75% grant of the total cost amounting to USD 500 000 by the Investment Climate Facility for Africa and government support.

Physical conditions and facilities of courts
Zambia’s justice system has continued to be dispensed in pre-independence court buildings. A senior legal practitioner lamented the state of the court buildings, describing the High Court as too ‘small and compact and lacking air conditioning’ with the result that the courts are not conducive for the dispensation of justice. He stated that there has been little change in the court infrastructure since he started practising law in 1987. He was of the opinion that the design of the High Court building was poor, with its size being small. By comparison, the recently built Subordinate Courts Complex in Lusaka is better-designed and could have made better housing for the High Court. Mr Mwansa also stated that the High Court building has not been improved since he first appeared there. A physical survey at the courts by the researcher indicates that there were only eight court rooms at the High Court in Lusaka and two court rooms at High Court and Kitwe High Court. Several judges therefore have to share court rooms in all the three districts visited. Mr Mwansa quipped that improvement is a strange terminology as far as the judiciary is concerned.

The number of High Court buildings is also limited. The High Court has permanent buildings only in Livingstone, Lusaka, Kabwe, Ndola and Kitwe. In places where the High Court has no permanent presence it is only sits as a circuit court, which happens about once every month, often for criminal matters. This has negative implications for cases where convictions by the subordinate court have to be confirmed by the High Court. It is reported that confirmation sometimes takes six months which contributes to the backlog of cases in the High Court and contributes to the increase in the prison population. The Director of Court Operations admitted that the infrastructure was very poor. He however indicated that, new High Courts were under construction in Kasama and Chipata. He further indicated that since the local court infrastructure was worse than higher courts, priority was given to construct these.

202 ‘Zambia launches computerised court procedure’, at http://zambia-insights.blogspot.com/2010/04/human-rights-commission-says-project-to.html (accessed 5 December 2012). One of the reasons affecting length of stay in custody of suspects is the slow pace at which the records are processed in the courts.
203 Interview with Mr Ernest C. Mwansa on 29 May 2012.
204 Mr Ernest Mwansa has been at the Bar since 1987, at the time the High Court building in Lusaka was under construction.
205 Community Law Centre, Zambian Human Rights Commission and the Open Society Initiative for Southern Africa (OSISA), Pre-trial detention 01 in Zambia: Understanding caseflow management and conditions of incarceration, 2011.
206 Interview with Mr Egispo Mwansa on 31 May 2012.
207 In a recent press report, the Deputy Minister for Justice expressed great concern at the dilapidated court buildings of the Munkonge Local Court in Kasama district. She said the building where court sessions are conducted has serious cracks and the wall can collapse any time strong winds and heavy rains occur. See http://www.lusakatimes.com/2012/05/15/court-building-danger-collapse-kasama/ (accessed 28 May 2012).
c. Access to information about the law and courts
The full text of the laws of Zambia is available at all justice institutions. The laws are all published in the English language and although the Zambia Law Development Commission is mandated to translate laws into local languages, no such translation has been done. Updating of the laws of Zambia is very poor as updates are not always available on time to the lawyers. They are also not located in one place and are scattered in various locations. A legal practitioner has to be very vigilant to be aware of all the laws in force at any given time. A senior legal practitioner, who has been at the Bar for 36 years, stated that even adjudicators are sometimes unaware of new legislation. She gave an example of how, in one particular case, the court had to adjourn proceedings in order to enable her to acquire for the judge a copy of the Anti-Gender Based Violence Act enacted in April 2011.208 The problem also affects magistrates in rural provinces, for example, magistrates operating in Mongu in Western Province who, at the time of this research, did not have copies of the latest amendments to the Penal Code and the Anti-Gender Based Violence Act.

The problem also affects magistrates in rural provinces, for example, magistrates operating in Mongu in Western Province who, at the time of this research, did not have copies of the latest amendments to the Penal Code and the Anti-Gender Based Violence Act. The Director of Court Operations indicated that his office has been making deliberate efforts to ensure that the High Courts, the Supreme Court and subordinate courts in urban areas were updated with the latest amendments to the law. He stated that notwithstanding this, courts in far-flung areas such as Chama, a rural town in the Eastern Province, are not up to date. Therefore, although there appears to be an attempt to keep courts updated with amendments to laws, there is an apparent financial handicap on the part of the court administration to effectively do so. It is, therefore, obvious that in many cases subordinate courts decide cases based on laws that may have been repealed or amended with the result that their decisions are likely to be overturned on appeal if and when the affected parties successfully appeal to the High Court.

The situation regarding expert commentaries was more or less the same as that which obtains with respect to the laws. While bemoaning the erratic publication of the Zambia Law Journal, which he attributed to lack of wide circulation and inertia on the part of legal practitioners, Mr Ernest Mwansa commended the University of Zambia School of Law for publishing several texts in the past few years.209 The ZLDC also publishes a quarterly newsletter that has been circulated among adjudicators in the subordinate court, legal practitioners and members of the general public. The newsletter however focuses more on disseminating the work of the institution rather than general legal commentary.

A visit to the judiciary library at the Supreme Court building in Lusaka showed books that are dated and are catalogued only on paper records. This is quite inefficient and reflects poor knowledge management in the event that such records are damaged. It is recommended that the library catalogues its collection electronically in a similar manner as HeinOnline and LexisNexis. Introduction of legal electronic databases for library staff and members of the judiciary would also provide a quick and cost-effective solution to the problems of access to legal texts. The country-wide availability of internet would be of great use to the judiciary in this regard and members of the judiciary would be able to access information from wherever

208 Interview with legal practitioner on 24 May 2012, name withheld.
209 Interview with Mr Ernest C. Mwansa on 29 May 2012.
they are located via an internet database. Currently an InfoBase called KAS Law is used by many legal practitioners. The product is produced by KAS Electronic Publishers, a company established to create electronic legal resources. The main menu consists of selected judgments, *Zambia Law Reports*, practice direction cases, statutory instruments from 1996 and Acts of Parliament, all of which are tools important for the judiciary and lawyers. The copyright to this product is credited to KAS *Zambia Law Reports*.

Further, adjudicators have no research assistants and have to undertake research on their own. This has implications for the quality of reasoning in the judgments. The judiciary has no research office. It is recommended that such an office be introduced as it would lead to the improvement of the quality of judgments. The country has at the moment a large number of university graduates with law degrees because the number of universities providing the Bachelor of Law degree has increased in the last decade. However, some of the graduates have not been able to qualify to the Bar. Such graduates could be provided with the necessary training in research skills, including the application of Information and Communications Technology to legal research, and then engaged as researchers in a judiciary research office. This would significantly contribute to the production of good quality judgments. The judiciary research office proposed above would also provide sufficient materials to engender discourse among adjudicators and keep the adjudicators in the lower courts informed about precedent-making decisions of the Supreme Court. Achieving this would of course entail engagement with institutions providing legal education so that appropriate curricula in research, technology skills and electronic database management is developed.

**Information about the justice system**

The courts sit in open court which permits members of the public and media. The Media Institute of Southern Africa (Zambia) has an annual judiciary media coverage award that is meant to encourage media personnel to report on the judiciary. The award is given in both the electronic and print categories. In his address to one such annual award ceremony, the Chief Justice stated that the image of justice is created mainly by the media and the public's information about, and impression of, judges and the justice system is shaped by the members of the media.\(^{210}\) The Director of Court Operations indicated that there is little information regarding the judiciary in the public domain. There is, however, no information disclosure policy although the judiciary has embarked on a deliberate programme to publicise the work of the justice system. He explained that, among other things, the judiciary will be exhibiting at the Commercial and Agricultural show on the Copperbelt and in Lusaka.\(^{211}\)

Sporadic statistics about the number of cases before the courts is published in media reports based on the comments or speeches by the Chief Justice. However, this has mainly been in respect of cases of sexual and gender-based violence. The country has for some time now been discussing the need for the enactment of a Freedom of Information Act. With this Act in place, the government would have moved towards being more efficient and responsive, transparent and accountable. The general public on the other hand, would have free access

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\(^{210}\) At http://ipsnews.net/news.asp?idnews=49208.

\(^{211}\) Interview with Mr Egispo Mwansa on 31 May 2012.
or access at a small fee to public information including that on the justice system. Access to information can also highlight problems of mismanagement of resources by those who are entrusted with these resources and can enhance participation of citizens in decision-making. It would also serve to prove or disprove accusations of corruption in public institutions such as the judiciary.
Independence, effectiveness and conduct of the judiciary

This chapter aims at establishing whether systems are in place to ensure the independence, integrity, competence and effectiveness of judges, prosecutors and lawyers, who form the core of the justice sector. The chapter discusses the extent of judicial independence, a concept that has many elements that mostly relate to security of tenure and emoluments, and individual and institutional freedom from unwarranted interference with the judicial process. The discussion covers an examination of the extent of independence, freedom from inappropriate executive or other influence and harassment of prosecutors and lawyers.

A. Judges

The Constitution of Zambia guarantees the independence of the judiciary by proclaiming that the Judicature shall be autonomous and shall be administered in accordance with the provisions of an Act of Parliament. In Zambia, the Constitution does not explicitly reflect the doctrine of separation of powers through balanced distribution of power and infusion of checks and balances in the exercise of these powers between all the organs of the state. The Mung’omba Constitutional Review Commission recommended that the Constitution needs to do this and in addition reflect this doctrine as a policy objective or directive principle of state policy. The judiciary remains reasonably independent, though some incidents of blatant executive interference have been reported. For instance, in 1969, President Kaunda questioned a decision of the High Court judge reducing the sentence of two Portuguese soldiers who had been convicted by a lower court of

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212 This is provided in Article 91(3).
illegal entry into Zambia. This led to the resignation of the Chief Justice.

The independence of the judiciary has also come under attack more recently, especially following the corruption cases involving the former Republican President and other high profile cases. Former President Banda reportedly stated that:

Lately, the judiciary has come under unjustified vicious attacks from a selected group of members of the public who have anointed themselves as spokesmen for the people of Zambia. There have been allegations accusing my government of interference with the judiciary; let me assure the nation that my government will respect the rule of law and most especially the independence of the judiciary as prescribed by the Constitution of Zambia.

Mode of appointment, security of tenure, remuneration and provision of resources are the sources of judicial independence in most states and are typically outlined in constitutional provisions. In Zambia, the Chief Justice, the Deputy Chief Justice and other judges of the Supreme Court are appointed by the President subject to ratification by Parliament. Progression from the High Court bench to the Supreme Court is therefore by appointment. It is recommended that promotion especially of the Chief Justice and Supreme Court judges be driven by peer progression rather than political appointments. On their part, judges of the High Court, as well as the chairman and deputy chairman of the Industrial Relations Court, are appointed by the President on the advice of the Judicial Service Commission. Qualifications for appointment as Supreme Court judge, puisne judge, chairman and deputy chairman of the Industrial Relations Court are provided for under Article 97 of the Constitution.

Legal practitioners that have been at the bar for not less than ten years may apply for appointment as a puisne judge of the High Court. The nominations have to be ratified by Parliament. After the ratification, they proceed to assume office and are presumed to be sufficiently qualified to hold such office. Judges are appointed regardless of ethnic, religious or gender considerations. There is no training provided upon appointment to the position of judge. The Director of Court Operations indicated that it was not right that untrained legal practitioners are accepted onto the bench. This is one of the reforms the judiciary has been considering, but

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214 Silva and Freira vs The People (1969), ZR 121.
216 ‘Rupiah denies interfering with judiciary’, The Post, Friday 10 September 2010.
217 Article 93 of the 1996 Constitution.
218 Article 95 of the 1996 Constitution.
219 A person shall not be qualified for appointment as a judge of the Supreme Court, a puisne judge or chairman or deputy chairman of the Industrial Relations Court unless (a) he holds or has held high judicial office; or (b) he holds one of the specified qualifications and has held one or other of the following qualifications: (i) in the case of a Supreme Court judge, for a total period of not less than 15 years; or (ii) in the case of a puisne judge, the chairman and deputy chairman of the Industrial Relations Court, for a total period of not less than ten years. However, where the President or the Judicial Service Commission are satisfied that, by reason of special circumstances, a person who holds one of the specified qualifications is worthy, capable and suitable to be appointed as a judge of the Supreme Court, a puisne judge, or chairman or deputy chairman of the Industrial Relations Court may dispense with these requirements. A specified qualification in this case is that the person is admitted as a legal practitioner in accordance with the Legal Practitioners’ Act (Chapter 30 of the Laws of Zambia).
has failed to implement due to financial constraints.\textsuperscript{220} Currently, the Supreme Court has the full complement of 11 judges, while the High Court, which has a full complement of 50 judges, has only 31 in place.\textsuperscript{221}

The Constitution does not make any provision with respect to emoluments, pensions and other conditions of service for judges. These are dealt with by the Judges (Conditions of Service) Act.\textsuperscript{222} Section 3 of the Act states that there shall be paid to a judge such emoluments as the President may, by statutory instrument, prescribe. This provision makes the judges susceptible to the compromise of their independence and impartiality as it implies a master and servant relationship where the master of the judges is the President. The power of the ‘purse’ cannot be underestimated in this situation where the judicature presided over by judges is expected to check the actions of the executive.

The retirement age for judges is 65, although the President is empowered to allow a judge to continue holding office beyond his or her retirement age so as to enable him or her to deliver judgement or to do any other thing in relation to proceedings that were commenced before them before they attained that age.\textsuperscript{223} The President may also appoint a judge, upon the advice of the Judicial Service Commission, or a judge of the Supreme Court, who has attained the age of 65 years, for such further period, not exceeding seven years, as the President may determine. Article 96(i) states that ‘any person appointed under Article 93 to act as a judge of the Supreme Court shall continue to act for the period of that person’s appointment or, if no such period is specified, until his appointment is revoked by the President’.

A judge may only be removed from office for inability to perform the functions of his or her office in accordance with the provisions of Article 98 of the Constitution which provides the grounds for removal as: infirmity of body or mind, incompetence or misbehaviour. The procedure for removal of a judge from office requires the President to appoint a tribunal consisting of a Chairman and not less than two other members, who hold or have held high judicial office. The tribunal is required to inquire into the matter and report on the facts thereof to the President and advises the President whether the judge ought to be removed from office under this Article for inability as aforesaid or for misbehaviour. During inquiry of the tribunal, the President may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the judge ought not to be removed from office.

\begin{footnotesize}
\textsuperscript{220} Ibid.
\textsuperscript{221} Interview with Mr Egispo Mwansa on 31 May 2012.
\textsuperscript{222} Chapter 277 of the Laws of Zambia.
\textsuperscript{223} Article 98 of the 1996 Constitution.
\end{footnotesize}
3. Suspension of judges

In May 2012 President Michael Sata suspended three judges: Supreme Court Judge Philip Musonda, High Court judges Charles Kajimanga and Nigel Kalonde Mutuna, over their alleged professional misconduct and has since appointed a tribunal to investigate them. It is reported that the trio were suspended over their conduct in a civil case involving the Development Bank of Zambia as complainant, and The Post Newspapers Limited, Mutembo Nchito and JNC Holdings Limited as defendants. The President appointed a tribunal with Malawi High Court Judge Justice Lovemore Chikopa as Chairman, and members that included Mr Justice Thomas Ndhlovu, retired High Court judge, Mr Justice Naboth Mwanza, and Chipili Katunasa as secretary. Mr Justice Nigel Kalonde Mutuna was suspended in relation to the manner in which he presided over the hearing and determination of the case of Development Bank of Zambia vs Post Newspapers Limited, JCN Holdings Limited and Mutembo Nchito; that he misbehaved and/or acted incompetently when he proceeded to hear and determine the matter without a formal order transferring the matter from Mr Justice Albert Mark Wood before whom the matter had been heard. In relation to judges Musonda and Kajimanga, President Sata directed the tribunal to inquire into the manner in which the duo interfered in and illegally retrieved or caused the retrieval of the cases of Development Bank of Zambia vs Post Newspapers Limited, JCN Holdings Limited and Mutembo Nchito and Finsbury Investments Limited vs Antonio Ventriglia and Manuela Sebastiani Ventriglia from justice Albert Wood. In granting leave to apply for judicial review to the judges, the High Court further ordered that the order so granted shall operate as a stay of the decisions of his Excellency the President to appoint a tribunal, to suspend the applicants and any adverse measures against the applicants in relation to the performance of their constitutional duties as duly appointed puisne judges pending determination of the matter. The state appealed against this ruling to the Supreme Court and the matter was heard in September 2012 by the full bench of Supreme Court judges. The decision of the Supreme Court was pending at the time of going to press.

B. Prosecution service

In a ministerial statement in Parliament, 2010, the then Minister of Justice indicated that the government was in the process of transforming the then Directorate of Public Prosecutions into a semi-autonomous body to be called the National Prosecution Authority (NPA). The prosecutorial functions in Zambia therefore now fall under the office of the NPA, which is established by an Act of Parliament as a body corporate. The Act protects the NPA from interference by providing that it shall not, in the performance of its functions, be subject to the direction or control of any person or authority, other than the Director of Public Prosecutions. The NPA has a board which consists of the following members appointed by the minister:

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225 National Prosecution Authority Act (No. 34 of 2010).
226 Section 6 provides that ‘except as otherwise provided in this Act, the Authority shall not, in the performance of its functions, be subject to the direction or control of any person or authority, other than the Director of Public Prosecutions’.
• The Director of Public Prosecutions, who is the chairperson;
• A representative of the Attorney-General, who is the vice-chairperson;
• The Director of Administration of the Authority, who is the secretary;
• A representative of the Public Service Management Division;
• A representative of the ministry responsible for labour; and
• Two other persons appointed by the minister.

The board meets for the transaction of business at least once in every three months and has the power to invest in such manner as it considers appropriate such funds of the NPA which it does not immediately required for the performance of its functions. The Act provides that:

for the purpose of performing its functions under this Act, [the board may] establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit. An action or other proceeding shall not lie or be instituted against a member of the Board or a member of a committee of the board for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise of or performance, or purported exercise or performance of any of the powers, functions or duties conferred under the Act.

The NPA is headed by the Director of Public Prosecutions (DPP), an office established under Article 56 of the Republican Constitution. The functions of the DPP are to:

• Institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence alleged to have been committed by that person;
• Take over and continue any such criminal proceedings as may have been instituted or undertaken by any other person or authority;
• Discontinue, at any stage before judgment is delivered, any criminal proceedings instituted or undertaken by the DPP or any other person or authority;
• Set the qualification for the appointment of prosecutors;
• Advise prosecutors on all matters relating to criminal offences;
• Review a decision to prosecute, or not to prosecute, any criminal offence;
• Advise the minister on all matters relating to the administration of criminal justice;
• Liaise with the Chief State Advocate, the Deputy Chief State Advocates, the prosecutors, the legal profession and legal institutions in order to foster common practices and to promote cooperation in the handling of complaints in respect of the authority;
• Assist the Deputy Chief State Advocates and prosecutors in achieving the effective and fair administration of criminal justice;
• Liaise with and assist the Attorney-General in matters of extradition and mutual legal assistance in criminal matters; and
• Appoint such experts as are necessary to assist the DPP to carry out any functions under this Act.
The DPP may order, in writing, that all or any of the powers vested in him to issue a sanction, fiat or written consent, may be exercised by the Chief State Advocate or a Deputy Chief State Advocate. However, the exercise of these powers by the Chief State Advocate or Deputy Chief State Advocate shall be limited only to such offences as the DPP may specify, and operate as if the powers had been exercised by the DPP.

The DPP also has power to direct that the investigation and prosecution of a particular offence be undertaken by a Deputy Chief State Advocate in the jurisdiction other than where it should have been undertaken and commenced. The DPP may delegate prosecutorial functions to the police other public institutions or private individuals. The Chief State Advocate, Deputy Chief State Advocates, State Advocates, prosecutors and other staff are appointed by the Board but fall under the direction of the DPP in their daily functions. A Deputy Chief State Advocate is responsible for supervising the operations of the Authority in a province. They may also exercise the functions of the Authority in the area of jurisdiction for which they are appointed and relating to any offences which have not been expressly transferred from the Deputy Chief State Advocate’s jurisdiction, either generally or in a specific case, by the Director of Public Prosecutions.

The NPA is subject to the direction or control of no other person or office except that of the DPP. Article 56(5) of the Constitution further states that ‘the powers conferred on the DPP shall be vested in him to the exclusion of any other person or authority’. However, this is with exception to matters of public policy, where the DPP is subject to the direction of the Attorney-General.

Further, the DPP is appointed by the President subject to ratification by the National Assembly. The Judicial Service Commission does not play any role in this appointment. Therefore, although the NPA may be said to be independent at law, the limit on the independence of the DPP extends throughout the entire system. The report of the Mung’omba Constitutional Review Commission noted that the DPP’s exercise of the functions of his office with professional diligence can only be assured if the office is independent from all organs of the state.

To avoid this, it is recommended that the DPP should be appointed by the President on recommendation of the Judicial Service Commission, subject to ratification by the National Assembly. It is further recommended that the DPP should be accorded security of tenure with the power to remove him or her vested exclusively in the National Assembly. It is also recommended that the provision subjecting the DPP to the Attorney-General’s direction under Article 56(7) of the Constitution be repealed to enhance the autonomy of the DPP.

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227 Section 8(4) of the National Prosecution Authority Act.
228 Section 9(3) of the National Prosecution Authority Act states that ‘... subject to the control and direction of the Director of Public Prosecutions, section 9(1).
229 Section 9(2) and (3) of the National Prosecution Authority Act.
230 Section 6 of the National Prosecution Authority Act.
231 Article 56(7) of the Constitution stipulates that in matters that involve general considerations of public policy, the Director of Public Prosecutions shall bring the case to the notice of the Attorney-General and shall in the exercise of his powers in relation to that case, act in accordance with any directions of the Attorney-General.
232 Although this appointment is subject to ratification by Parliament, many petitioners to the Mung’omba Constitutional Review Commission submitted that this affects the independence of the office as the DPP is accountable to the appointing authority.
233 Mun’gomba, 664.
c. Lawyers

The 2012 directory of members of the Law Association of Zambia (LAZ) lists 938 registered legal practitioners in the country.\[234\] At independence, in 1964, there were no Zambian lawyers,\[235\] and numbers have stayed low partly due to failures in the Zambian legal academy and obstacles to bar admission. The following statistics indicate that the pass rate at the Zambia Institute of Advanced Legal Education (ZIALE) has been poor for many years:

- In 2005, 18 out of the 84 enrolled students passed the examinations at first attempt, while only 29 out of 62 repeaters passed;
- In 2006, of the 116 students who enrolled, only eight passed at first attempt, while 49 passed from a total of 88 repeaters;
- In 2007, 11 students passed at first attempt out of an enrolment of 94;
- In 2008, 12 students passed at first attempt from an enrolment of 75, while of the 58 repeaters, 25 passed;
- In 2009, eight out of the 75 enrolled students passed at first attempt, while 14 out of the 73 repeaters passed; and
- In 2011, 18 out of 141 who sat exams for the first time passed the exams, while 8 out of 18 repeaters passed.

Some observers have argued that, in large measure, the poor pass rates result from inadequate funding and the effects of the natural self-interests of monopolists.\[236\] This allegation can be appreciated, as for most of Zambia’s history as an independent nation, the University of Zambia (UNZA) maintained the country’s only law school.\[237\] The lack of competition may have contributed to the stagnation of Zambian legal education, which was compounded by a dramatic fall in the level of public funding. However, newly established Universities have also started training lawyers. The graduates from the law school of one of the oldest of such universities – the Open University – met resistance in enrolling at ZIALE, the only institution providing advanced bar admission training in the form of the Legal Practitioners Qualifying Course.\[238\] It is contended that the lawyers who run the bar admissions programme have incentives to keep the number of Zambian lawyers low, to ensure that legal fees remain high.\[239\] The reasons for the low pass rate at ZIALE are however

\[237\] Ibid.
\[238\] ‘Zambia Institute of Advanced Legal Education (ZIALE) Council refused to enrol five law students from the Zambia Open University. This is because the students do not qualify for enrolment at ZIALE under the Legal Practitioners Act. And the Lusaka High Court has granted the students leave to apply for judicial review against the council’s decision not to enrol them. The students are also seeking a court order to stay and reverse the council’s decision not to admit them to the highest legal training institute in Zambia. The ZIALE council denied them application forms to enrol as students for the 2009–2010 intake.’ Charles Musonda, ‘ZIALE denies 5 students entry’, at http://zedians.ucoz.com/news/2009-06-01-127 (accessed November 2011).
\[239\] Nicholas Kahn-Fogel, ‘The troubling shortage of African lawyers’.
unclear. In 2008, the Chief Justice indicated the need for a comprehensive and forensic study to ascertain the cause or causes of these low passing rates at ZIALE.\footnote{Chief Justice Sakala bemoans ZIALE pass rate', at http://www.times.co.zm/news (accessed 4 December 2012).}

Legal practitioners interviewed for this research denied ever being harassed during the performance of their professional functions. Mr Ernest Mwansa, a former deputy minister and Member of Parliament, said that despite having combined politics and law practice, he had never been harassed.\footnote{Interview with Mr Ernest Mwansa on 29 May 2012.} Another legal practitioner who has been at the bar for 26 years echoed similar sentiments. He said Zambia provides a very conducive environment for law practice and one cannot feel harassed as it is safe to ply their trade.\footnote{Interview with legal practitioner, name withheld, 30 May 2012.} However, this positive assessment has been countered by recent media reports of the harassment of a lawyer for performing his professional duties. The case involved a foreign lawyer representing Mr Henry Banda, a Zambian diplomat and son of former President of Zambia, Mr Rupiah Banda.\footnote{Mr Henry Banda is the son of the former President Rupiah B. Banda.} In an article published on 14 April 2012 in The Post, the Secretary-General of the ruling Patriotic Front (PF) party reportedly made several comments with respect to Mr Henry Banda’s lawyer, Mr Robert Amsterdam.\footnote{Although Mr Robert Amsterdam is not a person qualified to practice in the Zambian Courts, his case is illustrative of harassment of a lawyer contrary to the spirit of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa which stipulates that ‘State parties shall ensure that lawyers are able to travel and to consult with their clients freely both within their own country and abroad’; and that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as national or social origin, etc.}

The comment alleged that, by performing his job as a lawyer for Henry Banda, the lawyer was somehow participating in a ‘criminal syndicate’.

In an editorial article published on 13 April 2012 in the state-owned Zambia Daily Mail entitled ‘Henry Banda’s lawyer offside’, the authors declare that Mr Amsterdam is ‘ignorant’, has a ‘colonial mentality’, and had made claims in his statements in defence of his client that had ‘no iota of truth’. Another article was published in The Post on 10 April 2012, attacking Mr Henry Banda as a ‘fugitive’, despite the fact that he had not been convicted of any criminal offence. The article further accused him of impropriety for having retained defence counsel.

Speaking from Washington DC, the lawyer, Mr Amsterdam, complained of ‘the regrettable choice on behalf of the ruling Patriotic Front and officials of the Zambian government to threaten and harass defence counsel’. He further said that ‘by seeking to intimidate lawyers with patently absurd claims, aiming to prevent them from defending clients, the Zambian government has unlawfully violated Mr Banda’s right to counsel’. It was also reported that Mr Amsterdam sought United Nations intervention in what he termed ‘politically motivated accusations against Henry’ and alleged ‘threats against his legal counsel’. He claimed that the Zambian government had been threatening, harassing and defaming him through the media. The matter was still in court at time of writing this report.
A 1998 Human Rights Watch report also highlights some cases of lawyers that have been harassed. Mr Robert Simeza was reportedly harassed when he started representing the now deceased politician Mr Dean Mung’omba’s lawyer.²⁴⁵ It is reported that he started getting anonymous phone calls, telling him to drop the habeas corpus and get off the case. His supermarket was raided by armed security and he was placed under constant surveillance by state agents. The same report also highlights the harassment of Mrs Mwangala Zaloumis and Mr Sikota Sakwiba when they were representing former Republican President Kenneth Kaunda.²⁴⁶

Complaints against erring lawyers may be made to the Legal Practitioners’ Committee or the Disciplinary Committee of the LAZ.²⁴⁷ A senior legal practitioner stated that although there is a robust disciplinary system under the LAZ, practitioners have expressed concern with the absence of a mechanism for sieving complaints to ensure that frivolous and unmeritorious complaints are screened out without summoning lawyers at great cost to them.²⁴⁸ The report of the committee presented to the LAZ Annual General Meeting held on 28 April 2012, indicates that the committee dismissed complaints and, in most cases, decisions were reserved to be rendered in writing. The report shows that while the committee was up to date with the complaints on the Copperbelt, there are 43 pending complaints to be heard in Lusaka with 37 new cases lodged in 2012.

The report also notes that it introduced a Panel System in Lusaka to help decongest the backlog of cases and was happy to report that it is now current with both the Lusaka and Copperbelt case list. The nature of complaints included the following:

- Practitioners who by their pronouncements diminish public confidence in the legal profession and judiciary;
- Conflict of interest;
- Lack of communication between client and advocate;
- Failing to account;
- Failing to act according to instructions or failing to prosecute or acting contrary to the client’s instructions and not taking written instructions from the client, causing misunderstanding between the practitioner and client;
- Unjustified bills for the services rendered;
- Failing to hand back files and giving refunds after withdrawal of instructions;
- Harassment and unprofessional language;
- Mismanagement of costs awarded and out of pocket expenses;
- Alleged harassment from the practitioner when refund of monies and deposits paid are requested after the client withdraws instructions;
- Sharing office space and profits with unqualified persons; and
- Dishonoured cheques payable to clients and the LAZ.

²⁴⁷ Established under the Law Association of Zambia (Chapter 31 of the Laws of Zambia).
²⁴⁸ Interview with legal practitioner, name withheld, 30 May 2012.
The Committee may refer matters to the Disciplinary Committee for a decision. The Disciplinary Committee is provided for under section 4 of the Legal Practitioners Act and is chaired by the Attorney-General. All practitioners admitted to practice as advocates are officers of the court and are subject to the court's jurisdiction. The court therefore has power to discipline legal practitioners. Applications can be made to the Disciplinary Committee by affidavit requesting that a practitioner be struck off the Roll. After hearing the matter, the evidence and report of the Disciplinary Committee may be referred to the court. The court has power to admonish the legal practitioner, or may make any such order as to removing or striking his name from the Roll, as to suspending him from practice, as to payment by him of a fine or may make an order for restitution or otherwise in relation to the case, as it may think fit, or may exonerate the practitioner. The Chief Justice and judges of the High Court also have powers vested in them to deal with misconduct or offences by practitioners.

Legal practitioners may be appointed from practice, where they may have focused on specific areas of the law, to the position of judge, where they are expected to adjudicate matters relating to all areas of law, including those in which their knowledge and experience may be limited. To write judgements in such cases would obviously take longer as the judge would be expected to undertake a considerable amount of research compared to writing a judgement in an area where they had practiced for many years. It is recommended that the judicial reforms should, therefore, consider establishing more specialised divisions of the courts as has been done in the case of the Commercial Court that only hears commercial matters. A family law division, for example, and another for criminal law would increase the level of specialisation by adjudicators who would preside over them.

### 4. Attempt to remove judge

According to Article 98(5) of the Constitution, the President is empowered to suspend a High Court or Supreme Court judge whose performance or conduct he deems unacceptable. A presidential spokesman said Judge Chanda would have his conduct as a judge probed by a three-person tribunal, composed of Supreme Court Judge Robert Kapembwa, who was also chairman of Zambia’s Anti-Corruption Commission; another Supreme Court Judge, Brian Gardner, and Judge Leonard Unyolo of Malawi’s Supreme Court. The tribunal was expected to recommend whether Judge Chanda should be relieved of his duties permanently. Sources

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249 Chapter 30 of the Laws of Zambia.

250 The Act prescribes the conduct of legal practitioners. However, since legal practitioners are also officers of the court, they are obliged to obey the rules of the High Court.

251 An application may be made by the practitioner themselves to be struck off the roll. The committee may recommend to the Chief Justice that the name of the practitioner be removed from the roll, or that the application be refused.

in the judiciary said the suspension may have had something to do with the petitions pending in the Supreme Court which were filed by opposition groups challenging Zambia elections and Chiluba’s legitimacy as President. The petitions were filed by former President Kenneth Kaunda’s United National Independence Party (UNIP) and the Liberal Progressive Front (LPF), but the court had postponed hearing them. Chiluba, the groups said, has a Zairean father, which would preclude him from being President according to a constitutional amendment which he personally oversaw.

The Magistrates’ and Judges’ Association of Zambia denounced Judge Chanda’s suspension, calling it intimidation by Chiluba. Justice Timothy Katane kwa, the association’s chairman, said the suspension had sent shivers down the spines of several judges in the High and Supreme courts. Justice Katane kwa said: ‘Judges are not above the law, but the use of a tribunal, if not properly done, might be a tool which can undermine the independence of the judiciary.’ He added that the practice of meting out discipline to judges through a tribunal is a rare practice in Commonwealth countries. Some opposition parties similarly criticised Judge Chanda’s suspension, saying it undermined the independence of the judiciary. Dean Mung’omba, President of the opposition Zambia Democratic Congress (ZDC), said: ‘This cannot be in the interest of justice. The aim is to control the judiciary so that they [Chiluba’s party, the Movement for Multi-party Democracy (MMD)] can be stealing cases in the same way they stole the vote.’ LPF chairman Dr Rodger Chongwe similarly said the suspension was a blow to the independence of the judiciary. He said the suspension was a signal that Chiluba and his ruling party would not stand judges who frustrate their interests. ‘The action was political. It has nothing to do with his performance. It’s a warning to other judges. If they don’t toe the line of Chiluba’s politics, they will suffer the same fate.’

Judge Chanda drew considerable attention to himself in the middle of last year when he overruled the Speaker of the Zambian Parliament, Dr Robinson Nabulyato, who had sentenced two journalists to indefinite prison terms for contempt of Parliament. Judge Chanda argued that the Speaker and Parliament had no right to imprison people. Judge Chanda sparked more controversy by releasing 53 suspects who were awaiting trial, because of failure by prosecutors to bring them to court speedily, arguing that justice delayed was justice denied. Some of the released suspects had been awaiting trial since as far back as 1992. Subsequent robberies in Lusaka were blamed on some of the men released by Chanda. Chanda contended that he was innocent and that some judges wanted to cause his downfall because of his contributions to restoring democracy in Zambia.

Judge Kabazo Chanda resigned from the judiciary on 15 August 1997. In a statement released to the press, he said he was going to settle for a life of farming in Lusaka:

I cannot continue to work in a judiciary controlled by intellectually-bankrupt buffoons and perverts …. With three university degrees in law to my credit, I feel I am overqualified for this junior position of puisne judge, where I have unfairly been left to stagnate for eight long years by jealous humble-academic-profile superiors.

In October 1998, High Court Judge James Mutale recommended that Judge Chanda be reappointed to conclude his judicial review of the dismissal of former legal affairs Minister Remmy Mushota and Mandlevu MMD Member of Parliament Patrick Katyoka over the ZMK 210 million scandal. Judge Chanda, who is now lecturer in the law school at the UNZA, said he had served his time as a judge and was not looking forward to continue hearing cases.
Criminal justice

This chapter considers both impunity and the fairness of the justice system in responding to criminal offences. Criminal offences are dealt with by different structures with specific functions. The Zambia Police Force (ZP) is one of the principal actors in the public safety and order sector that deals with internal security. Other key institutions in the sector include Zambia Prisons Service (ZPS), Anti-Corruption Commission (ACC) and the Drug Enforcement Commission (DEC).

A. Protection from crime

Collection of crime statistics

The Central Statistical Office (CSO) is the institution established to provide for a comprehensive National Statistical Database for timely, relevant and high quality statistical information to institutions of the government, private sector and the wider national and international community. The CSO has its headquarters in Lusaka and also has offices in all nine provincial centres of Zambia and some selected districts in each province. Provincial offices are mainly responsible for data collection, manual editing and data entry. However, the CSO has not been used as a depository of statistics on the criminal justice sector. Consequently, the ZPS, ZP, ACC and DEC all collect statistics relating to their area of operations. The database of the CSO is large and has the capacity to fulfil many data needs. However, the capacity to manipulate the data is limited amongst the researchers and places a burden on the CSO.

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253 The Anti-Corruption Commission is established by the Anti-Corruption Act No. 3 of 2012.

254 Established under the Narcotic Drug and Psychotropic Substances Act.


256 Republic of Zambia, Governance Data Mapping: Assessing the Quality and Availability of Governance Data, Governance
is recommended that this be improved so that all national statistics are centrally located and easy to access.

With respect to the Zambia Police Force, each police station submits crime returns on a weekly, monthly, quarterly and annual basis. These are submitted to the Division headquarters where they are compiled to give the picture at provincial level. After all provinces have submitted their returns to the Force Headquarters, these are compiled as the national statistics. The returns include nature of crime, value of property involved, place of occurrence and whether any arrest was effected. A source indicated that these figures are often inaccurate as some complainants report the same occurrence to two different police stations leading to duplication in the provincial returns.  

An internet source indicates that between 1998 and 2000 the rate for all recorded Index offences decreased from 665.7 to 579.7 per 100 000 in Zambia, a decrease of 12.9%. The source goes on to state that the rate of:
- Intentional homicide decreased from 9.02 to 7.89, a decrease of 12.5%;
- Major assaults decreased from 233.46 to 219.08, a decrease of 6.2%;
- Rape increased from 2.72 to 2.97, an increase of 9.2%;
- Robberies decreased from 35.09 to 26.72 per 100 000, a decrease of 23.9%;
- Automobile theft increased from 6.78 to 7.84, an increase of 15.6%;
- Burglaries decreased from 117.39 to 97.68, a decrease of 16.8%; and
- Thefts decreased from 261.24 to 217.52, a decrease of 16.7%.

According to a 2009 report by the African Human Security Initiative, the Copperbelt Province, where mining activities are concentrated, had the highest number of reported cases between 2007 and 2008. Only 47.44% of these were taken to court and there were even fewer convictions (38.01%). In the remote province of Luapula, the number of reported crimes was very low and just fewer than 10% of the cases taken to court resulted in convictions during the same period. It goes on to state that only in two provinces—Eastern and Western—more than 50% of reported cases were taken to court, but then just over a third (34.82%) resulted in convictions in Eastern Province and only about one in four (24.04%) resulted in convictions in Western Province. The low number of convictions clearly raises questions in the mind of the public and has an impact on the public’s confidence in the criminal justice system. This is a matter of perception and understanding of interpretation of statistics as the purpose of the criminal justice system is not to secure convictions at all times but to ensure justice.


257 Name withheld.


259 African Human Security Initiative, The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa, Monograph No. 159, 2009, 1. Note that it is unclear from the report whether these statistics are for the period January 2006 to May 2007 or some other time frame.
Table 3: Offences reported and dealt with by the police in 2005, listed by province

<table>
<thead>
<tr>
<th>Division</th>
<th>Reported Number</th>
<th>Taken to court Number</th>
<th>Percentage</th>
<th>Offences resulting in convictions Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lusaka</td>
<td>22,683</td>
<td>8,811</td>
<td>38.84</td>
<td>7,170</td>
<td>31.61</td>
</tr>
<tr>
<td>Copperbelt</td>
<td>41,533</td>
<td>19,714</td>
<td>47.44</td>
<td>15,794</td>
<td>38.01</td>
</tr>
<tr>
<td>Southern</td>
<td>12,032</td>
<td>2,729</td>
<td>22.6</td>
<td>1,497</td>
<td>13.01</td>
</tr>
<tr>
<td>Eastern</td>
<td>4,299</td>
<td>2,323</td>
<td>52.9</td>
<td>1,495</td>
<td>34.82</td>
</tr>
<tr>
<td>Central</td>
<td>6,783</td>
<td>1,922</td>
<td>28.32</td>
<td>1,319</td>
<td>20.56</td>
</tr>
<tr>
<td>Western</td>
<td>4,515</td>
<td>2,487</td>
<td>55.10</td>
<td>1,085</td>
<td>24.04</td>
</tr>
<tr>
<td>North-western</td>
<td>3,405</td>
<td>1,252</td>
<td>36.93</td>
<td>1,109</td>
<td>32.56</td>
</tr>
<tr>
<td>Luapula</td>
<td>1,751</td>
<td>-</td>
<td>-</td>
<td>171</td>
<td>9.77</td>
</tr>
<tr>
<td>Northern</td>
<td>3,595</td>
<td>652</td>
<td>18.14</td>
<td>532</td>
<td>14.80</td>
</tr>
</tbody>
</table>

Table 4: National gender-based violence cases reported

<table>
<thead>
<tr>
<th>Offences</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>2,241</td>
<td>2,094</td>
<td>3,351</td>
<td>1,961</td>
<td>2,079</td>
</tr>
<tr>
<td>Rape</td>
<td>360</td>
<td>185</td>
<td>229</td>
<td>131</td>
<td>126</td>
</tr>
<tr>
<td>Defilement</td>
<td>2,668</td>
<td>852</td>
<td>1,224</td>
<td>1,043</td>
<td>1,354</td>
</tr>
<tr>
<td>Indecent assault on female</td>
<td>139</td>
<td>133</td>
<td>140</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Indecent assault on boys</td>
<td>3</td>
<td>6</td>
<td>0</td>
<td>-</td>
<td>0</td>
</tr>
<tr>
<td>Incest</td>
<td>27</td>
<td>19</td>
<td>32</td>
<td>17</td>
<td>9</td>
</tr>
<tr>
<td>Abortion</td>
<td>6</td>
<td>5</td>
<td>11</td>
<td>16</td>
<td>3</td>
</tr>
<tr>
<td>Abduction</td>
<td>31</td>
<td>27</td>
<td>29</td>
<td>5</td>
<td>13</td>
</tr>
<tr>
<td>Neglecting to provide</td>
<td>745</td>
<td>1,523</td>
<td>1,556</td>
<td>1,692</td>
<td>74</td>
</tr>
<tr>
<td>Child stealing</td>
<td>16</td>
<td>9</td>
<td>4</td>
<td>16</td>
<td>2</td>
</tr>
<tr>
<td>Child desertion</td>
<td>74</td>
<td>38</td>
<td>100</td>
<td>72</td>
<td>47</td>
</tr>
<tr>
<td>Depriving the beneficiaries</td>
<td>296</td>
<td>149</td>
<td>195</td>
<td>237</td>
<td>124</td>
</tr>
<tr>
<td>Bigamy</td>
<td>15</td>
<td>3</td>
<td>3</td>
<td>21</td>
<td>1</td>
</tr>
<tr>
<td>Infanticide</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Sodomy</td>
<td>11</td>
<td>14</td>
<td>25</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Concealment of birth</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Cruelty to children</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>-</td>
<td>0</td>
</tr>
<tr>
<td>Child destruction</td>
<td>2</td>
<td>7</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Human trafficking</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6,642</strong></td>
<td><strong>5,069</strong></td>
<td><strong>6,904</strong></td>
<td><strong>5,215</strong></td>
<td><strong>3,833</strong></td>
</tr>
</tbody>
</table>

Cases of gender-based violence have also been on the increase: 3,836 cases were recorded from January 2011 to January 2012 in Lusaka alone. The Young Women’s Christian Association, a non-governmental organisation (NGO) running various women’s programmes including drop-

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261 Zambia Police, Victim Support.
in-centres, recorded 2,028 cases at their centres in the first quarter of 2011. Statistics from the Victim Support Unit (VSU) are, unlike those from other units of the ZP, readily available. Table 5 shows the reported cases over a five-year period.

**Table 5: Cases reported and dealt with by the VSU in 2009**

<table>
<thead>
<tr>
<th>Division</th>
<th>Reported</th>
<th>Taken to court</th>
<th>Offences resulting in convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Number</td>
<td>Percentage</td>
</tr>
<tr>
<td>Lusaka</td>
<td>22,683</td>
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<td>36.93</td>
</tr>
<tr>
<td>Luapula</td>
<td>1,751</td>
<td>Unavailable</td>
<td>Unavailable</td>
</tr>
<tr>
<td>Northern</td>
<td>3,595</td>
<td>652</td>
<td>18.14</td>
</tr>
</tbody>
</table>

Below is a sample of incidents of mob justice that have been reported in the media:

- On 9 April 2012 at Millennium Bus Station in Lusaka a traffic police officer was beaten up after a mini bus that was allegedly chased by officers overturned, leaving several passengers injured;\(^{265}\)
- In July 2012, a mob meted out justice on two truck drivers and killed one of them at the border town of Kasumbalesa;\(^{266}\)
- On 12 August 2009 Copperbelt University students beat up a suspected thief;\(^{267}\)
- On 4 February 2010 a mob reportedly beat Chingola police officer Matandi Sitali in reaction to allegations that he had attempted to rape a woman;\(^{268}\)
- In February 2009, a mob killed an alleged arsonist and murderer, ‘Kalaye’;\(^{269}\) and
- In March 2011 a mob reportedly attacked an office where a suspected thief was being held and eventually forced the suspect into the open. The mob then stoned the suspected thief before pouring kerosene on him and setting him ablaze. Police intervened to save the man from the crowds, but the suspect subsequently died of his injuries.\(^{270}\)

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266 ‘Driver burnt to death’, [www.uk.zambian.co.uk/home/2012/07.06](http://www.uk.zambian.co.uk/home/2012/07.06) (accessed 25 January 2013).
268 Ibid.
269 Ibid.
270 Ibid.
The scale of crimes in the country may also be deduced from a national survey conducted by Afrobarometer in 2005. Almost six in ten (59%) of the respondents in that survey reported that they feared that a crime would be committed against them. Of the respondents, 46% reported that something had been stolen from their or their family’s home at least once. Further, a perception survey of 100 participants conducted found that 40% of those interviewed described the level of crime in Zambia as ‘very high’ while another 40% described it as ‘high’. In total, 95% of the Lusaka participants in that survey perceived crime levels in Zambia to be very high or high, followed by respondents in Mansa and Solwezi with 75%. It would thus seem that an overwhelming majority of these participants considered crime in Zambia to be a serious problem that government needed to address. Advertisements by tour operators also indicate the perceived crime levels in the country and warn tourists and visitors to the country about places that they should avoid.

Corruption also adds to the overall levels of crime in Zambia despite the proclaimed political will at the highest levels of government to deal with it. A consideration of the position in the past 20 years is instructive of the nature of the problem and the response to it by the government.

After taking the reigns of power in 1991, Dr Kenneth Kaunda’s successor, Dr Frederick Chiluba, made efforts to liberalise the economy and privatise industry, but allegations of massive corruption characterised the latter part of his administration. In late August 2001, late President Dr Levy Mwanawasa emerged as the Movement for Multi-party Democracy (MMD) choice for its presidential candidate. Following his coming into office, he declared a zero tolerance fight against corruption, and on 17 July 2002 the establishment of a Task Force on Corruption was announced by the President. The task force, which is complementing the efforts of the Anti-Corruption Commission (ACC), was constituted to investigate the plunder of public resources which occurred during the period 1991 to 2001.

According to the 2004 National Government Baseline Survey, corruption in Zambia had become one of the three major concerns of citizens. Of the people interviewed in the survey, 87% perceived corruption to be a problem in the country, with a growing tendency for officials to demand unofficial payments in return for services rendered. In March 2000, the government launched the National Capacity Building Programme for Good Governance in Zambia. This programme and the Poverty Reduction Strategy Paper acknowledged that corruption is a serious governance challenge, which significantly contributes to poor public service delivery and affects economic and social development in Zambia.

In 2004, the government further launched the national Governance Baseline Survey Report. The report provided a firm empirical basis for developing a comprehensive anti-corruption policy and appropriate anti-corruption measures in Zambia in order to take the

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272 Ibid.


274 Ibid.

anti-corruption fight to a higher level. This saw the development of the National Anti-Corruption Policy, approved and launched by the President of the Republic of Zambia on 27 August 2009. The policy, which is the first ever comprehensive policy on corruption in Zambia, provides a framework for developing ways and means of preventing and combating corruption in a comprehensive coordinated, inclusive and sustainable manner. In the preamble of the National Anti-Corruption Policy, the then President Rupiah Banda stated: ‘Corruption has been and still is a significant impediment to good governance in Zambia.’

According to the Corruption Perception Index (CPI), Zambia was ranked the ninth most corrupt country out of the 90 countries surveyed in 2001, 11th out of the 102 countries surveyed in 2002 and again 11th out of the 133 countries surveyed in 2003. In 2006, it dropped to ninth position, along with ten other countries, out of the 163 countries surveyed. A 2008 Governance Data Mapping which assesses the quality and availability of governance data indicates that in 2004, 60% of the reports were made in person, 20% through fax or letter, 8% by phone, less than 2% by e-mail and the remaining 10% were referrals from other institutions. The report indicates that the data collection by the ACC was affected by the staffing profile and filling of the establishment.

The report further indicates that of the 2008 reports, 880 were categorised as corruption cases. After scrutiny, 416 of the reports were authorised for investigation. The balance of the cases not authorised for investigation were either referred to relevant authorities for further administrative action or closed as they were not pursuable. The reasons for closing cases range from lack of evidence, death of key witnesses and non-availability of witnesses. The report indicates that each complaint is entered in the Central Information Unit and assigned a serial number. The entry of the complaint in the database includes the name of the complainant and nature of complaint. This helps filtering the complaints enabling the ACC to prevent opening two separate investigations on a complaint that has multiple sources.

The Legal and Prosecutions Department undertakes quarterly docket reviews to ensure that their processing is of good quality. Performance audits are undertaken quarterly and annually. The ACC reports are submitted to the President and the National Assembly of Zambia and distributed to the line ministries, departments, cooperating partners and the private sector. At the time the Governance Data Mapping was undertaken in 2008, the last available report was for 2005 and had not yet been submitted to Parliament as the financial report had not yet been audited as required.

276 Republic of Zambia, National Anti-Corruption Policy, 2009, i.
277 Corruption Perception Index, 2004, at www.tizambia.org.zm/ (accessed November 2011). The CPI is a poll of polls reflecting the perceptions of business people and country analysts, both those that are resident and non-resident in a country. It measures the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, drawing on corruption-related data in expert surveys carried out by a variety of reputable institutions. It reflects the views of business people and analysts around the world, including experts who are resident in the countries evaluated.
279 Ibid.
280 Ibid.
281 Ibid.
During a media briefing on Tuesday 24 April 2012, ACC Public Relations Manager disclosed that the ACC had instituted investigations into 96 cases out of 148 corruption-related reports received in the first quarter of 2012. A total of 52 cases were deemed not to have had sufficient details of a corruption offence to warrant investigations to be conducted and advice on the best option to deal with the matters was rendered. The overall number of reports received including non-corruption-related cases was 517. Meanwhile a total of 13 arrests were recorded country-wide while two convictions and one acquittal were also recorded.

Table 6: Summary statistics of cases handled by the ACC in 2011

<table>
<thead>
<tr>
<th>Total reports received</th>
<th>Complaints received</th>
<th>Information received</th>
<th>Authorised complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,401</td>
<td>345</td>
<td>1,056</td>
<td>126</td>
</tr>
<tr>
<td>Unauthorised complaints</td>
<td>Dockets closed</td>
<td>Dockets brought forward from 2010</td>
<td>Total number of active dockets</td>
</tr>
<tr>
<td>219</td>
<td>172</td>
<td>438</td>
<td>564</td>
</tr>
</tbody>
</table>

Although several convictions of high ranking public officials have been made by the courts in respect of corrupt practices, such as the cases of former high ranking army officials, the state has however been said to be too incompetent to handle corruption cases. The acquittal of former Republican President Fredrick T.J. Chiluba led to a public outcry. Drug related cases have also been on the increase in the country. Although comprehensive information on actual figures was difficult to access as the researcher could not reach the relevant information person. However, some information became available from a press statement on the DEC website to the effect that it had dealt with a total of 1,677 drug-related offences from January 2006 to May 2007, with 1,627 of these resulting in successful convictions.

B. Policing
Maintaining law and order in Zambia is the preserve of the Zambia Police Force (ZP), which is divided into regular and paramilitary units under the Ministry of Home Affairs. The Zambia Security Intelligence Service (ZSIS), under the Office of the President, is responsible for intelligence and internal security.

- Protect the people and the Republic against threats and acts of espionage, subversion, sabotage and actions intended to overthrow and undermine the government by the use of arms or other violent means;

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282 The ACC indicated that they have an office that collects all statistics. Unfortunately, repeated attempts to obtain the statistics were fruitless despite assurances that they will be available to the reporter. Corruption cases are not easy to investigate and prosecute and are time consuming.


285 Dr Fredrick Titus Jacob Chiluba was charged with six counts of theft by Public Servant Contrary to sections 272 and 277 of the Penal Code (Chapter 87 of the Laws of Zambia) and was acquitted on all counts. See *The People vs Dr Fredrick Titus Jacob Chiluba*, SSP/124/2004.


287 The ZSIS is established under Article 108 of the Constitution and regulated under the Zambia Security Intelligence Service Act (No. 14 of 1998).
• Collect, correlate and evaluate intelligence relevant to the security or interest of the Republic;
• Disseminate intelligence to government institutions in such manner as the President may direct;
• Coordinate and oversee activities relating to security intelligence of any ministry or department of government, the armed forces and police force;
• Advise government, public bodies or institutions, and statutory bodies or corporations on the protection of vital installations and classified documents; and
• Recommend to the government, public bodies, institutions or statutory bodies any person who may not have access to classified information.

Staff and employees of the ZSIS are prohibited to publish or disclose any information during and after they have left service. Nobody without the consent or authority of the President, or any other person designated in writing by the President in that behalf, is permitted to enter any premises or component of the ZSIS or have any access to its books, records, returns or other documents.

The ZP is established under Article 103 of the 1996 Constitution. Other instruments regulating the police are the Juveniles Act, the Criminal Procedure Code and the Penal Code Act. Article 103 provides for such other forces as Parliament may prescribe. The functions of the ZP are outlined in Article 104 of the 1996 Constitution as follows:

• To protect life and property;
• To preserve law and order;
• To detect and prevent crime; and
• To cooperate with the civilian authority and other security organs established under the Constitution and with the population generally.

Parliament has authority to make laws regulating the ZP, and in particular, providing for:

• The organs and structures of the ZP;
• The recruitment of persons into the ZP from every district of Zambia;
• Terms and conditions of service of members of the ZP; and
• The regulation generally of the ZP.

The Zambia Police Act has therefore been enacted to provide for the above. Under the Act, every police officer has a duty to:

• Promptly obey and execute all orders and warrants lawfully issued to him/her by any competent authority;

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289 Chapter 88 of the Laws of Zambia.
290 Chapter 87 of the Laws of Zambia.
291 Parliament can prescribe or establish other police forces or units.
292 Chapter 107 of the Laws of Zambia.
293 Section 14(3) of the Zambia Police Act.
Collect and communicate intelligence affecting the public peace;  
Prevent the commission of offences and public nuisances;  
Detect and bring offenders to justice; and  
Apprehend all persons whom (s)he is legally authorised to apprehend and for whose apprehension sufficient grounds exist.

The Act 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 (Amendment) Act (No. 14 of 1999) established Community Crime Prevention Methods which authorise any community (in a residential, commercial or industrial area) to establish a crime prevention and control association to complement the police in the maintenance of law and order. The Central Police Command in Lusaka oversees nine provincial police divisions, with jurisdiction over police stations in towns country-wide (i.e. rural areas). Although the government identified a need for 27,000 police officers and hired 1,500 new officers during the year, only 17,400 police were on duty at year’s end.

The core functions identified in the strategic plan include the following:
- Maintenance of public safety and order;
- Prevention of crime and protection of life and property;
- Detection of crime and prosecution of offenders;
- Traffic management;
- Upholding of human rights in protecting the Constitution; and
- Provision of high quality service to the public.

Under the Fifth National Development Plan, the government introduced reforms that were aimed at enhancing professionalism and accountability and respect for human rights in the ZP. The ZP was reoriented and retrained in community-based service. There was also established a Community Services Division aimed at contributing to the protection and maintenance of human rights and the promotion of sound police/public relations. As a result of the reforms in the ZP targeted at the institutional weaknesses, the VSU was established to provide counselling services to offenders and victims and co-coordinate with civil society and professional bodies in carrying out their duties.

The mandate of the VSU extends to cases related to gender-based violence such as 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 VSU has made notable progress in spearheading a vigorous education and sensitisation campaign aimed at changing the mindset of the police and public towards vulnerable persons.

294 Section 48.  
295 Interview on 12 May 2012, name withheld.  
The ZP currently has several units. These include the general duties units found in all police stations in the country at the front desk. The role of these officers is of a general nature. They are tasked to prevent crime, arrest offenders, preserve life and protect property and the public at large. These officers are charged with the responsibility of responding to reported cases at the police station. They are also responsible for the prevention of crime by patrolling their areas of operation both during the day and at night. This unit is also tasked to open dockets of cases and conduct some investigations by visiting the scenes of crime if Crimes Investigations Department personnel are not present. Thereafter they forward the dockets of cases to the investigation unit also based at police stations whose duty is to investigate the cases thoroughly before taking them to the prosecution units based in police divisions. The duty of every prosecution unit is to prosecute all criminal cases brought before it from police stations.

The ZP also has a police paramilitary battalion and a mobile unit. The police paramilitary battalion’s objective is to provide a strike force in disturbed areas and guard vital installations. They provide training courses at their own school. The mobile unit reinforces 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, and are based in Kamfinsa, outside the city of Kitwe. Both paramilitary forces have their own command structures, which ultimately report to the police Inspector-General. The ZP also has an Intellectual Property Unit. The unit uses the Copyright and Performance Rights Act in its daily operations. In an attempt to provide for effective and efficient enforcement on intellectual property rights, the unit uses the Penal Code which has provisions on industrial property protection.

In setting up policing strategies and priorities, the ZP consider the frequency of crimes reported, nature of crimes and areas, methods (modus operandi), crime patterns and type of victims. Community consultations through community–police security meetings are held where the views of communities relating to crime problems in their areas are obtained. The ensuing analysis is used to set the policing priorities. This is undertaken by the Research and Planning Unit of the police service. Through this process the police have been able to ensure police presence through police posts in the communities. The police also engage proactive policing where they sensitise communities to avert criminal acts in the domestic arena. Other than this, there is however no specific strategy aimed at marginalised groups.

The police also have in place mechanisms for community policing under the Community Safety Unit whose core duties include making the communities safer and developing strategies to combat crime by holding joint meetings with the communities. Another strategy is the establishment of Neighbourhood Watch Associations (NWAs) and Citizens Crime Prevention Units. Some police stations also conduct ‘open days’ to allow members of the community have a say or express their concerns. These initiatives are mostly dominated by the underprivileged as

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298 Act No. 44 of 1994 (Chapter 406 of the Laws of Zambia). This Act presently regulates matters of copyright. It protects the rights of composers, authors and performers, and covers moral rights of their works. The Act provides for both civil and criminal sanctions in cases of infringement.
299 Interview on 12 May 2012, name withheld.
they are often in high density and peri-urban areas. At the Lusaka Division, the police conduct basic orientation and training programmes for NWAs in crime prevention, human rights in law enforcement and basic principles in law. There are no allowances or other remuneration to NWA members as these are strictly volunteers.

Police officers are appointed through direct recruitment as cadet officers or police constables. The entry requirements are: Zambian citizenship, age between 18 and 25, minimum height of 1.65m (1.60m for females), medical fitness, minimum academic qualification of high school or secondary school certificate (university degree for Cadet Officers), good character, without a criminal record and unmarried. The Inspector-General of Police has authority to dispense with any of these requirements. The training curricula includes communication skills, first aid, criminal investigations, judicial system, evidence, human rights, use of force and firearms, statutes dealing with criminal law, United Nations (UN) Code of Conduct for Law Enforcement Officers and police duties. Further in-service training for officers includes criminal investigations, forensic science and crime scenes management. The police curriculum on human rights is supplemented by the Zambia Police Standing Orders and the Zambia Police Instructions. The two provide guidance in the area of human rights and non-discrimination.

Although the salary scales could not be obtained, a source within the ZP stated that the police are not adequately remunerated as to meet the high standard of living. One police officer who asked to remain anonymous told the researcher that, in his view:

The police in Zambia serve under poorer conditions of service than other public servants. For many years now they have remained among the lowest paid civil servants and among the few prohibited from forming a union ... While in other countries police officers are respected, in Zambia being a police officer is a shameful job. The salaries are low, the housing is poor and inadequate and there is no proper healthcare scheme or education allowance. Everyone knows [how] deplorable our conditions are ... how can they respect us [?]

The Lusaka Division Commanding Officer has been reported to have stated that poor working conditions are the reasons why police officers fail to perform their duties. One police officer indicated that on average, police officers in Zambia currently earn about ZMK 750 000 (ZMK 750 Kwacha rebased; approximately USD 150) per month compared to unionised civil servants such as teachers and nurses who get around ZMK 1 020 000 (ZMK 1 020 Kwacha rebased; approximately USD 200) per month. A police officer’s pay can drop to as low as ZMK 255 000 (ZMK 255 Kwacha rebased; approximately USD 50) in cases where the officer obtains a pay

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300 Interview on 12 May 2012, name withheld.
301 Salary scales are not public information.
302 ‘Poor working conditions affecting cops’ morale, says Mhlakeni’ at http://www.postzambia.com/post-read_article.php?articleId=23010 (accessed September 2012). Poor working conditions include poor infrastructure, housing, inadequate transport, stationary and other things needed in the execution of their duties.
303 Interview on 12 May 2012, name withheld.
advance or a bank loan. The Division Commanding Officer also reportedly said poor conditions of service reduced the morale and increased the feeling of dejection among the officers. These poor conditions of service and poor remuneration could account for the numerous accusations and suspicions of corruption among in the police force. The Minister of Home Affairs has reportedly expressed concerns at the continued reports of corruption among some officers, which was evident from the lifestyle they were leading.304 The minister was quoted as asking how a traffic officer could amass wealth worth ZMK 1 billion when his salary was below ZMK 3 million.305

There are widespread reports of unlawful killings, torture, beatings and abuse of suspects and detainees by police in the country.306 Although the Constitution prohibits these, there are reports of torture and other cruel, inhuman, or degrading treatment or punishment as the police frequently use excessive force including torture when apprehending, interrogating and detaining criminal suspects or illegal immigrants. In 2008, the government’s Human Rights Commission (HRC) reported that torture was prevalent in police stations and noted that ‘police officers continue to rely on torture as an interrogation technique’.307 There are also reports of arbitrary arrests and prolonged pretrial detention.

The country has some mechanisms and systems in place to ensure investigation of complaints against the police. These include the Zambia Police Act, the Police Tribunals (Procedure) Regulations and the Zambia Police Standing Orders No. 32–34. Complaints against police officers may be dealt with by the Legal and Professional Standards Unit of the ZP. However, this unit only exists at the force headquarters. Complaints against the police may also be dealt with by the Police Public Complaints Authority (PPCA). This investigates cases but can only make recommendations of action to be taken following its findings. In this respect, the authority is a toothless institution.308 The hearings of the authority are open to the public and the media is permitted to attend and report on them. The ACC also investigates complaints relating to corrupt practices. A source in the police force indicated that some police officers have been disciplined administratively while others have been prosecuted.309 In other instances no action is taken.

305 Ibid.
308 The PPCA reported that between January and September, it received 143 complaints of police misconduct: 31 were related to unlawful detention; 50 to unprofessional conduct; 20 to police brutality; 20 to abuse of authority; 20 to unlawful debt collection; one to interference in a marriage; and one to death in police custody. The PPCA recommended to the MoHA permanent secretary disciplinary action in the form of punishment or dismissal in 26 of the 143 cases. Of the remaining complaints, the PPCA recommended nine for other disciplinary action while it dismissed the allegations in 94 cases and continued to investigate 14 cases. Many cases of abuse went unreported due to citizen ignorance of the PPCA and fear of retribution. See Bureau of Democracy, Human Rights and Labor, 2011 Country Reports on Human Rights Practices, at http://www.state.gov/g/drl/rls/hrrpt/2009/af/135983.htm (accessed 13 May 2012).
309 Interview on 12 May 2012, name withheld.
C. Non-state action against crime
The Zambia Police (Amendment) Act (No. 14 of 1999) permits citizens to establish CCPs and undertake Citizen on Patrol activities. However, the functions of these associations are subject to the direction and control of the officer in charge of the police station in that area. They are not allowed to carry firearms or use their own equipment except those provided by the police such as batons and whistles. It is also mandatory for them to be accompanied by a police officer while on patrol. The existence of these initiatives suggests that, on its own, the police force is ineffective.

D. Fair trial
A number of remedies are available to people who have been detained without trial or have been unlawfully detained, including application for bail and habeas corpus. However, due to the limited availability of lawyers at the Legal Aid Board, the remedies are rarely used by people who cannot afford to hire their own lawyers.\textsuperscript{310} It is reported that some defendants have awaited trial for as long as ten years and that approximately one-third of persons incarcerated in remand prisons and other prisons had not been convicted of a crime or received a trial date.\textsuperscript{311} Part of the problem is also the low level of public awareness of legal aid in Zambia. The 2009 State of Governance Report pegged awareness of legal aid at 28.8\% for rural dwellers and 45.5\% for urban dwellers; 1.6\% had used Legal Aid Board services.\textsuperscript{312}

Although citizens have a right to independent legal representation, the question of choice is dependent on whether they can afford to hire a practitioner of their choice. Lawyers running law firms run these as businesses and can, therefore, not be blamed for charging competitive fees.\textsuperscript{313} The criminal court informs all persons brought before it of their rights and although the official language of the court is English, interpreters are provided in accordance with the needs of the accused. Courts are congested, and there were significant delays in trials while the accused remained in custody. In cases in which the magistrate’s court did not have jurisdiction, at least six months elapsed before a magistrate committed the defendant to the High Court for trial. Following committal, preparation of the magistrate court record for transmittal to the High Court took months or, in some cases, as long as a year. Once a case reaches the High Court for trial, court proceedings last an average of six months.\textsuperscript{314}

E. Appropriate remedies and sentencing
Zambian law has provided for the death penalty since the colonial era. Although the current Constitution provides for the protection of the right to life, it makes exception for the execution of a sentence of a court in respect of a criminal offence under the law in force in Zambia of which a person has been convicted. The crimes punishable by the death penalty are treason,

\textsuperscript{310} Article 18(1) 9(d) of the current Constitution provides that every person charged with a criminal offence ‘shall unless legal aid is granted to him [or her] in accordance with the law enacted by Parliament for such purpose be permitted to defend himself [or herself] before the court in person, or at his [or her] own expense, by a legal representative of his [or her] own choice’. It is for this purpose that the Legal Aid Board was established in 2002, to provide free legal assistance especially to the poor and vulnerable.


\textsuperscript{312} Republic of Zambia, 2009, State of Governance Report, 82.

\textsuperscript{313} Interview with legal practitioner, 24 May 2012, name withheld.

murder and aggravated robbery where the offensive weapon is a firearm.\textsuperscript{315} Under the Zambian Penal Code, pregnant women and persons under 18 years of age cannot be sentenced to death but to life imprisonment or to detention at the President’s pleasure.\textsuperscript{316} One of the concerns about the application of the death penalty is that most of those who are most likely to receive the death penalty are the economically disadvantaged because such people often cannot afford legal representation.

A consortium of NGOs and faith organisations has embarked on a campaign for the abolition of the death penalty and its replacement with the sentence of life imprisonment without parole.\textsuperscript{317} At the time of writing this report, the consortium consisted of the following organisations:

- Prisons Care and Counselling Association;
- Caritas Zambia;
- Catholic Commission for Justice and Peace;
- Catholic Church – Bwacha Parish, Kabwe;
- Human Rights Commission;
- Prison Fellowship of Zambia; and
- Prisoners’ Future Foundation.

The Consortium argues that:

the death penalty does not answer much to any of the three major reasons of incarceration: (a) Deterrence (we are witnessing an increase in levels of crime day in day out meaning the death penalty has not acted as a deterrent). (b) Retribution (how does one go to do hard labour if he does not go out of the prison, and work for the state in tillage of the prison farms). (c) Rehabilitation – Social justice. How does the state rehabilitate someone in the grave?\textsuperscript{318}

The consortium cites the following reasons to support their campaign:

- The Zambian criminal justice system has many gaps, for example, the failure to establish a witness fund and decentralise legal aid boards;
- Zambia is a party to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984 and the 1957 standard minimum rules for the treatment of prisoners, which do not endorse the death penalty;
- The death penalty is contrary to Zambia being a Christian nation, one of whose tenets should be that vengeance belongs to God only;
- The death penalty address only the effects of crime, and not the root causes;

\textsuperscript{315} Sections 43 (treason), section 200 (murder) and section 294 (aggravated robbery).
\textsuperscript{316} Section 25.
\textsuperscript{318} Ibid.
• The state should not reduce itself to the level of a murderer;
• Zambian traditional justice did not embrace the death penalty, but was restorative rather than retributive; and
• The execution process amounts to torture of the condemned person.319

Lawyers interviewed expressed concerns of lack of up to date legal materials which makes researching the law by both the judges and lawyers very difficult; that often lawyers argue their cases on the basis of outdated legal literature while judges write their judgments based on equally outdated materials.320 There are also inordinate delays in availing evidence to defence lawyers, thereby, limiting their time to prepare defences.321 ‘Missing’ exhibits or exhibits that ‘disappear’ and confessions extracted by coercion from accused persons by incompetent investigator are also a concern.322 These all make it impossible for the death penalty to be applied fairly and consistently. Further, appeals against a death sentence are not in line with international human rights standards that require that there be a mandatory appeal in all cases that attract capital punishment.323 This disadvantages those convicts who are not aware of the right to appeal or are too devastated by the sentence to think of initiating the appeal process. The inordinate lengths of time that sentenced prisoners stay on death row is another concern. Some prisoners have been said to have been on death row for as long as 25 years.324

Zambian criminal law provides for both custodial and non-custodial sentencing.325 Whether custodial sentences match the offence the accused is convicted of depends on the facts of each the cases in question. The inclusion of penalty clauses in legislation other than the Penal Code has led to some inconsistencies in the sentencing framework in the country. For example, section 7 of the Prohibition and Prevention of Money Laundering Act326 provides an option of a fine and maximum sentences for all the offences created there under.327 The Narcotic Drugs and Psychotropic Substance Act and the Anti-Corruption Act, on the other hand, do not provide for minimum sentences as that has been left to the discretion of the court and have no provision for an option of a fine. It is arguable that money laundering is as serious an offence as corruption. Therefore, the provision of an option of a fine for the offence seems anomalous as a person convicted of money laundering, in the absence of aggravating factors, will be fined as the court has stated that where an offence has an option of a fine, the person must be fined.

319 Ibid.
320 Interview with legal practitioner, 24 May 2012, name withheld; interview with Mr Ernest C. Mwansa on 29 May 2012.
321 Ibid.
322 Ibid.
323 International human rights standards on the other hand require that there is a mandatory appeal in all cases that attract capital punishment. There is no law prescribing mandatory appeal and leave to appeal is granted only by the court.
325 Penal Code (Amendment) Act No. 12 of 2000, Penal Code (Amendment) Act No. 13 of 2000, Criminal Procedure Code (Amendment) Act and Prisons Act (Amendment) Act No. 14 of 2000 provide community service sentencing. These aim at alleviating problems faced by prison authorities such as overcrowding by reducing the prison population to manageable level, as well as rehabilitation of offenders so as to reduce the rate of recidivism.
327 Sections 8(a) and (b) provide for a fine not exceeding 400 000 penalty units; and 100 and exceeding 170 000 penalty units or to imprisonment for a term not exceeding ten years, or not both.
A person convicted of money laundering can thus be sentenced to a fine and walk free unlike a person convicted of corruption or drug related offences despite the aggravating circumstances of commercial gain.

The Public Interest Disclosure (Whistleblowers Protection) Act\textsuperscript{328} protects those who report incidents of corruption and entitles them to anonymity, compensation, relocation and employment reinstatement. However, the Act does not protect those who air complaints publicly in the press. Another Act of note is the Forfeiture of Proceeds of Crime (Asset Forfeiture) Act.\textsuperscript{329} This Act allows the government to seize and confiscate illegally obtained property. In recent years the increased use of minimum mandatory sentences has also raised questions as to the appropriateness of sentences in Zambia. Most of such sentences apply to sexual offences and their introduction into the law appears to have been largely driven by the emotional public reaction to the abhorrence of sexual offences rather than rational assessment of the offences. Minimum sentencing provisions also have the effect of taking away the judicial discretion to impose a sentence that fits the crime in each particular case. Examples of offences that attract minimum sentences are defilement, which attracts a minimum sentence of 15 years imprisonment\textsuperscript{330} and other offences of a sexual nature amount to felonies and anybody found guilty is liable, upon conviction, to imprisonment for a term of not less than 20 years.

Zambia also has in place the recently passed Anti-Gender Based Violence Act of 2011, which provides for protection orders for the victims. The court may, at the request of the applicant or on the court’s own motion, include a provision which binds the respondent to be of good behaviour; directs the respondent to seek counselling or other rehabilitative service; or forbids the respondent to be, except under conditions specified in the order, at or near places frequented by the applicant or by any child or other person in the care of the applicant.\textsuperscript{331} The Act provides that shelters for child and adult victims shall offer a programme for the provision of counselling to victims; the provision of rehabilitation services to child victims; and the reintegration of adult victims into their families and communities.\textsuperscript{332} Where in a criminal trial in respect of gender-based violence which is not aggravated, the complainant expresses the desire to have the matter settled out of court, or the court considers this prudent, the court shall refer the case for settlement by any alternative dispute resolution method.\textsuperscript{333} In addition, the court may refer the complainant and the offender for counselling and where necessary, require the offender to receive psychiatric help.

\textsuperscript{328} Act No. 4 of 2010.
\textsuperscript{329} Act No. 19 of 2010.
\textsuperscript{330} Section 138 of the Penal Code.
\textsuperscript{331} Section 15.
\textsuperscript{332} Sections 27 and 28.
\textsuperscript{333} Section 38.
F. Prisons

Legal and institutional framework
The Zambian Constitution establishes the Zambia Prison Service (ZPS) for the management and control of prisons and prisoners lodged therein.\(^\text{334}\) This is supported by the Prisons Act\(^\text{335}\) and the Prisons (Amendment) Act (No. 16 of 2004). The Prisons Act provides for:

- Establishment of prisons;
- Establishment of a prison service;
- Discipline of prison officers; and
- Management and control of prisons and prisoners.

The Prisons (Amendment) Act provides that in every prison in which women prisoners are imprisoned there shall be women prison officers who shall have care and the superintendence of the women prisoners, and who shall be responsible for their discipline.\(^\text{336}\) It also establishes a Prison Health Service, whose purpose is to provide and administer healthcare within the service.\(^\text{337}\) These statutes are supported by the Prisons Rules that were drawn up in 1966 and the Prison Standing Orders of 1968. The Prison Service Principle Guidelines set out in some detail the service’s goal and the overall mission of the MoHA, under which the ZPS falls.

At the helm of the ZPS is the Commissioner of Prisons appointed by the President.\(^\text{338}\) The Commissioner of Prisons, acting on the advice of the Police and Prisons Service Commission, appoints regional commanding officers below the rank of Deputy Commissioner.\(^\text{339}\) The administration and control of the ZPS and supervision of all prisoners vests in the Commissioner of Prisons, subject to the direction of the minister.\(^\text{340}\) In every prison there is an officer in charge who is appointed by the commissioner.\(^\text{341}\) Every officer in charge supervises and controls all matters in connection with the prison to which he is appointed and keeps such records as the commissioner may from time to time direct and is responsible to the commissioner for the conduct and treatment of prison officers and prisoners under his control, and for the due observance by such officers and prisoners of the provisions of the Act and of all rules, directions and orders made or given there under.\(^\text{342}\)

\(^{334}\) Constitution of Zambia, Article 106.
\(^{335}\) Prisons Act (Chapter 97 of the Laws of Zambia).
\(^{336}\) Section 7(1).
\(^{337}\) Section 16.
\(^{338}\) Section 10.
\(^{339}\) Section 4A.
\(^{340}\) Section 10.
\(^{341}\) Section 5(1).
\(^{342}\) Section 5(2).
Prison population

All prisons in the country are public facilities and there are no prisons that are privately run. There are 86 prisons in Zambia, 53 of which are standard prisons and 33 open air/farm prisons. Among the 53 standard prisons, there are ten medium security prisons, three remand prisons and one reformatory school. One of these facilities is exclusively for juveniles and one for women. However, juveniles are also held with adult inmates at facilities throughout the country. The high prison population has led to failure in achieving the country’s objectives for custodial sentencing, of reformation and rehabilitation. The prison officer/inmate ratio has become too large to permit the undertaking of the processes of rehabilitation.

Although Zambia’s prisons were built to accommodate 5,500 inmates, the prison population has increased over the years to 15,300 inmates in 2012. 2009 statistics indicate that the prison population stood at 15,000 inmates. 2005 statistics show that 35% of prison inmates were women. A 2010 survey found that the occupancy rate of prisons in Zambia was 300% in a population of 16,666. It is further reported that the 8th UN Survey on Crime Trends and the Operations of Criminal Justice Systems show that Zambian prisons are among the most overcrowded in the world: out of the 128 countries that participated in the study, Zambia had the sixth-highest occupancy rate.

Although the Constitution safeguards the rights of pre-trial detainees, the numbers are high due to bottle necks in the case-flow management in the criminal justice system.

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349 It protects the right to personal liberty, freedom from inhuman treatment and secure protection before the law. It provides that any person charged with a criminal offence shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. If any of the provisions of Articles 11–26 have been or are likely to have been contravened the injured party may apply for redress to the High Court. The Constitution also offers protection against the arbitrary incarcration of individuals in Article 18(8) which states that before a person can be convicted of a criminal offence, that offence must be defined and its penalty prescribed in a written law. The rights of pre-trial detainees are further protected by other statutes such as the Criminal Procedure Code Act, Supreme Court Act, Prisons Act, Juveniles Act, Local Courts Act, Mutual Legal Assistance in Criminal Matters Act, Anti-Corruption Commission Act and Narcotic Drugs and Psychotropic Substances Act.

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98 PART II ZAMBIA: JUSTICE SECTOR AND THE RULE OF LAW
2012 report indicates that there were over 6 000 pre-trial detainees out of a prison population of more than 16 600. Although figures showing the actual numbers of pre-trial detainees could not be obtained from prison authorities as the authorised personnel was out of the country, the 2011 Human Rights Report indicates that approximately one-third of the total number of inmates represent this category. A survey which examined a random sample from the remand register and record from the warrant showing the last court date that the remand prisoner was to appear in court concluded that the average time period spent by prisoners on remand in the sample ranged from 18 days in Kamwala to 246 days in Kabwe, with a mean of 51% for all prisons. The report goes on to state that there has been a steady increase in the size of the prison population without any expansion of infrastructure. For example, Mukobeko Prison, which was built in 1950, with a capacity of 400 was housing over 1 731 prisoners in 2010, while Lusaka Central Prison, designed to hold 200, was housing 1 500 prisoners and detainees. It is reported that it is common to find that cells hold two or three times their specified capacity.

Challenges

In 2010, Human Rights Watch, the Prisons Care and Counselling Association and the AIDS and Rights Alliance for Southern Africa conducted an investigation into prison conditions in Zambia, interviewing hundreds of inmates and visiting six prisons. The three NGOs released a report that decried many abuses of prisoners and detainees in Zambian Prisons. Overcrowding, malnutrition, rampant infectious disease, grossly inadequate medical care and routine violence at the hands of prison officers and fellow inmates were among the ills identified. Overcrowding appears to be the source of many other challenges and is probably the biggest. A recent media report indicated that 152 inmates were sharing a cell meant for 40 prisoners while lavatories were in a deplorable condition at Mukobeko Maximum Security Prison.

In 2002, the HRC found that the general state of prison cells and dormitories at Kamwala, Lusaka Central and Mwembeshi Prisons fell below the standards of national and international acceptable norms for keeping prisoners. The cells and dormitories were filthy, congested and unfit for human habitation. Lack of sleep as a result of overcrowding has emerged as one of the biggest problems facing prisoners. At some prisons, prisoners sleep on the floor while others are so overcrowded that inadequate floor space forces prisoners to sleep while standing.

5. CRIMINAL JUSTICE


Pre-trial detention in Zambia: Understanding Case-flow Management and Conditions of Incarceration, 39, 98.

Ibid.: 51.


Ibid.


Interview with Mr Godfrey Malembeke, Executive Director, PRISCCA.

Bedding in the form of mattresses and blankets are also in short supply in most prisons. Food is inadequate both in quality and quantity. However, it was found that the government has initiated measures to address the problems relating to food and at least provide prisoners with blankets.

The conditions in Zambian prisons contravene provisions of the International Covenant on Civil and Political Rights, the UN CAT and the African Charter, to which Zambia is a party, as well as Rule 10 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. The combination of overcrowding, minimal ventilation and a significantly malnourished and weakened population create fertile grounds for the quick spread of diseases such as tuberculosis (TB). The Zambia Prisons Service is said to have reported the very high incidence rate for TB of 5 285 cases per 100 000 inmates per year. In April 2012, the Vice-President Guy Scott was assigned to visit Mukobeko Maximum Security Prison in Kabwe by President Michael Sata after a report of inhuman conditions at the prison. He was reportedly the first high-ranking official to visit the prison since independence. Dr Scott said that the prison conditions had deteriorated to levels where inmates had been dehumanised. He was quoted as saying: ‘After seeing for myself the deplorable conditions, I have concluded that this is like hell on earth and as such there is a need to address some of the challenges.’

The Minister of Home Affairs described the congestion as inhuman and that there was need to find a lasting solution. He said several years after independence it was unacceptable for prisoners to be using plastic containers to relieve themselves at night.

HIV is another health-related problem rampant in Zambian prisons. The prevalence of HIV in Zambian prisons was last measured at 27% – nearly double that of the general adult population (15%). However, with the aid of NGO partners, the prisons have expanded HIV testing, so that 57% of the prisoners interviewed in one survey across all six facilities visited had been tested. However, access was uneven; larger prisons were said to have significantly higher levels of testing than smaller prisons, and men were more likely to be tested than women and juveniles. Access to anti-retroviral therapy for HIV treatment has also improved among the prison population in recent years, particularly in the larger prisons. Prisoners are also reported to have complained of diarrhoea and scabies.

Zambian prisons are characterised by poor sanitation, dilapidated infrastructure, inadequate and deficient medical facilities, meagre food supplies, and lack of potable water resulted in serious outbreaks of dysentery, cholera and tuberculosis, which the overcrowding exacerbated. Failure to remove or quarantine sick inmates and the lack of infirmaries at many prisons have resulted in the spread of airborne illnesses such as tuberculosis, leading to the reinfection and

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361 Ibid.: 32.
362 Ibid.: 32.
363 Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons.
365 Ibid.
366 Ibid.
367 Unjust and Unhealthy: HIV, TB and Abuse in Zambian Prisons.
368 Ibid.
369 Interview with Mr Godfrey Malembeka, Executive Director, PRISCCA.
death of prisoners. Drugs to combat tuberculosis are available, but the supply is erratic. Many
prisoners are malnourished as they receive only one serving of cornmeal and beans per day,
called a ‘combined meal’, because it represented breakfast, lunch, and dinner. An offender
management unit has been established with the objective of reintegrating prisoners into society
upon their release from prison. The programme has been relatively successful if measured in
terms of the reduction in recidivism.
Access to justice

The right of each individual to have his cause heard is affirmed in Article 7 of the African Charter on Human and Peoples’ Rights and also Article 14 of the International Covenant on Civil and Political Rights. The right to access justice is a fundamental human right as set out in Article 8 of the Universal Declaration of Human Rights: ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.’ Access to justice in itself refers to the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with these human rights standards. For one to do so, the institutions of justice should be accessible and affordable. It is a right that intersects with other rights such as the right to information, as one must know of and about the existence and work of institutions of justice and the remedies they provide. The realisation of the right access to justice is therefore dependent on a number of factors, including public knowledge of rights, physical and financial access to courts and procedural norms. This section aims to establish the extent to which an average Zambian citizen is able to assert his or her rights against the government or private individuals.

A. Knowledge of rights
A key prerequisite to the full exercise or enforcement of any rights is the knowledge of those rights. The holder of rights must know these rights, what they are, what they entail. Most members of Zambia’s ethnic groups or tribes who reside in the rural areas know, understand and access customary law which is informal, flexible and tailored to the needs of the people it

370 ‘[E]very individual shall have the right to have his cause heard’, African Charter on Human and Peoples’ Rights at http://www.afrimap.org/english/images/treaty/file423992c4bbee.pdf.
serves. Unfortunately, the traditional courts that administer customary law are not recognised by statute as part of the judiciary although their existence is acknowledged. Matibini’s findings showed that awareness levels about the availability of formal justice mechanisms are quite low among the poor and women and concluded that if there is low level of awareness of the mechanisms of justice available and low rights awareness among the members of general public, then the right to justice is as good as denied.372

Table 7 shows the population’s awareness of the availability of legal aid reported in the State of Governance Survey.373 The survey found that only 28.8% of the population was aware of legal aid, with 71.2% not aware. It also showed that 45.5% of urban residents were aware compared to 18.6% of their rural counterparts. On the basis of these findings and the fact that access to legal aid is a right, it can be surmised that the awareness levels of Zambians is low.374

Table 7: Public awareness of the availability of legal aid375

<table>
<thead>
<tr>
<th></th>
<th>Aware</th>
<th>Not aware</th>
<th>Number of persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Zambia</td>
<td>61.8</td>
<td>38.2</td>
<td>6 039 849</td>
</tr>
<tr>
<td>Residence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rural</td>
<td>48.5</td>
<td>51.5</td>
<td>3 748 787</td>
</tr>
<tr>
<td>Urban</td>
<td>83.5</td>
<td>16.5</td>
<td>2 291 062</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>69.1</td>
<td>30.9</td>
<td>2 864 457</td>
</tr>
<tr>
<td>Female</td>
<td>55.5</td>
<td>44.5</td>
<td>3 136 306</td>
</tr>
<tr>
<td>Education level</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primary</td>
<td>46.7</td>
<td>53.3</td>
<td>2 774 043</td>
</tr>
<tr>
<td>Secondary</td>
<td>82.2</td>
<td>17.8</td>
<td>2 300 060</td>
</tr>
<tr>
<td>Higher</td>
<td>95.0</td>
<td>5.0</td>
<td>363 086</td>
</tr>
<tr>
<td>Never been to school</td>
<td>33.1</td>
<td>66.9</td>
<td>602 660</td>
</tr>
<tr>
<td>Province</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Central</td>
<td>48.1</td>
<td>51.9</td>
<td>618 069</td>
</tr>
<tr>
<td>Copperbelt</td>
<td>77.8</td>
<td>22.2</td>
<td>1 136 380</td>
</tr>
<tr>
<td>Eastern</td>
<td>49.6</td>
<td>50.4</td>
<td>825 533</td>
</tr>
<tr>
<td>Luapula</td>
<td>71.7</td>
<td>28.3</td>
<td>456 166</td>
</tr>
<tr>
<td>Lusaka</td>
<td>81.4</td>
<td>18.6</td>
<td>800 226</td>
</tr>
<tr>
<td>Northern</td>
<td>65.7</td>
<td>34.3</td>
<td>718 167</td>
</tr>
<tr>
<td>North-western</td>
<td>55.6</td>
<td>44.4</td>
<td>351 356</td>
</tr>
<tr>
<td>Southern</td>
<td>46.2</td>
<td>53.8</td>
<td>717 291</td>
</tr>
<tr>
<td>Western</td>
<td>39.2</td>
<td>60.8</td>
<td>416 662</td>
</tr>
</tbody>
</table>

B. Physical accessibility
Accessibility has to be examined from several angles. Prior to independence, traditional courts were recognised and part of the dispensation of justice. These are located close to where people live – practically in every village. This makes them accessible to the residents of that village. Today these courts have no legal recognition in the Zambian laws and operate as a part of the informal

374 Ibid.
justice system. Decisions made by these courts are not legally binding and cannot be enforced. As a result, citizens are reluctant to pursue justice in the traditional courts and in pursuit of more enforceable judgments seek access to formal courts. However, such access is impeded by a number of factors including long distances to those courts. This problem particularly affects rural dwellers.

The distances from where people live to places where formal courts are located are often daunting. In 2009, the country had only 704 local courts magistrates, 130 subordinate court magistrates and 37 judges of the High Court. Although the actual number of court buildings was unobtainable, one can surmise the extent of accessibility to courts that are few and have few personnel. Most of the court buildings are old and were built long before the country began to consider the needs of persons with disabilities. The National Plan of Action on Disability indicates that it was observed that more than 90% of the buildings and streets are inaccessible to most persons with disabilities. The Zambia Federation of the Disabled (ZAFOd) went on to sue building owners and the Electoral Commission of Zambia (ECZ) for owning buildings that are not accessible to persons with disabilities and won the case against the ECZ.

An earlier study indicates that in the Monze district there was only one subordinate court, which was a court of first instance in almost all criminal matters and an appellate court for seven local courts. The nearest High Court is in Livingstone, which is 380 kilometres away from Monze and the Supreme Court is accessible only in Lusaka for people from Monze. Another study indicates the city of Lusaka is spread over a wide area and public transport at peak hours is extremely inefficient due to heavy traffic congestion. In some cases, transportation problems cause late starting of court sessions and causes fatigue to those who walk for long distances, sometimes walking for as much as one and a half to two hours.

C. Financial accessibility

A second factor that affects access to justice in Zambia is financial resources. Court users need money to pay for transportation from their homes to court houses and to pay court fees or charges. The cost rises the higher up the court structures one goes. In the subordinate court, the fee for a default writ of summons is ZMK 150 000 (ZMK 500 Kwacha rebased; approximately USD 30). This varies depending on the distances. In general, court fees do not hinder access as they are affordable. What is prohibitive is the cost of legal representation. Given the serious limitations and constraints faced by the Legal Aid Board, most poor people are unable to engage legal practitioners to represent them in court. Mr Ernest Mwansa agreed the assertion that legal

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378 Sela Brotherton (suing as Secretary of the Zambia Federation of Disability Organisations vs Electoral Commission of Zambia 2011/ HP/0818).
practitioners’ fees are beyond the reach of the average Zambian.\textsuperscript{382} Another legal practitioner\textsuperscript{383} running a reasonably successful law firm, also agreed that, while a considerable number of people may be able to afford the court fees, it is fees payable to counsel that are unaffordable. However, he justified the level of lawyers’ fees with the fact law practice is a business and lawyers should be allowed to charge fees that make the business a viable venture.

\textbf{D. Unreasonable delay}

The value of access to justice is diminished if the delivery of justice is characterised by unreasonable delays. Unreasonable delay is due to a multiplicity of reasons. Missing case records, illness of presiding adjudicators, election petitions,\textsuperscript{384} influx of criminal matters and poor attitude of legal practitioners all result in delayed resolution of civil matters.\textsuperscript{385} One legal practitioner said they had commenced a case in 2005 which was still in the court in 2012. The case had been handled by different lawyers of both the plaintiff and defendant. The plaintiff had changed lawyers six times since the commencement of the matter and had applied for amendments to pleadings three times since commencement of the proceedings. This necessitated the defendant’s amendment of the defence three times. The matter had been allocated to three different judges one of whom died and another transferred outside Lusaka thereby prolonging the matter unduly.\textsuperscript{386} The legal practitioner indicated that it was not always the fault of the court that civil cases were unduly delayed. Another legal practitioner stated that sometimes private practitioners agree to take up ‘bad’ cases and when it is time to plead before court they do not have anything to plead and come up with every manner of reason to have the matter adjourned.\textsuperscript{387}

A number of processes take place before a case is brought before the courts. These processes are beyond the control of the courts. Further, the processing of criminal matters takes precedence over civil matters, as some of the accused persons are in custody. The courts in Zambia have a backlog of cases and do not always hear cases within a reasonable time. The average time taken to dispose of a case at each stage of the administration of justice is estimated at 63, 68, 146, 327, 659 and 1 316 days for small claims courts, local courts, subordinate courts, High Court, Supreme Court and industrial-related courts, respectively, while the corresponding time for criminal cases was 52, 65, 165 and 320 days for local, subordinate, High Court and Supreme Court, respectively.\textsuperscript{388} The State of Governance Report 2009 shows that only the Supreme Court met its target during the Fifth National Development Plan. It had a case backlog of 27.0\% against the annual target of 30\%.\textsuperscript{389}

A governance data mapping indicates that the civil cases can be processed in the time frame indicated in Table 8.

\textsuperscript{382} Interview, 29 May 2012.
\textsuperscript{383} Interview, name withheld, 21 May 2012.
\textsuperscript{384} These are prioritised as they have to be heard within a specified period of time.
\textsuperscript{385} Interview with legal practitioner, 21 February 2012, name withheld.
\textsuperscript{386} Interview with legal practitioner, 21 February 2012, name withheld.
\textsuperscript{387} Interview with legal practitioner, 21 February 2012, name withheld.
\textsuperscript{388} Review of FNDP.
Table 8: Time frames for the disposal of civil matters

<table>
<thead>
<tr>
<th>Level of court</th>
<th>Time frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local court</td>
<td>3–12 months</td>
</tr>
<tr>
<td>Subordinate court</td>
<td>3–12 months</td>
</tr>
<tr>
<td>High Court</td>
<td>6–12 months</td>
</tr>
<tr>
<td>Commercial Court</td>
<td>1 day–3 months</td>
</tr>
<tr>
<td>Industrial Relations Court</td>
<td>1 day–6 months</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>6–12 months</td>
</tr>
</tbody>
</table>

E. Traditional, religious and community courts

The majority of people residing in rural areas give primacy to customary law in most parts of the country. This customary law is applied by traditional courts that are run by traditional leaders who are not acknowledged as part of the judicial system in the Zambian Constitution. The traditional courts are not recognised in the law. Yet in rural areas, chiefs are required to recommend potential candidates for appointment as local court magistrates, who are knowledgeable of the local customs and this gives them influence over local courts. Traditional courts are very punitive, which is inconsistent with the respect of human rights and dignity that is advocated.

There have been calls for traditional courts to be recognised for many years now. The Women and Law in Southern Africa Research and Educational Trust–Zambia (WLSA-Zambia) recommended that these courts be recognised in 1999 following a comprehensive study into the justice delivery system and where women seek help most.

The House of Chiefs has also called on government to recognise traditional courts and strengthen their verdicts. A press report indicated that members of the House said that traditional courts will have more authority if government recognises them and enforces their verdicts, which will result in the courts being respected more among people in rural areas.

Chief Mujimanzovu said that ‘[t]raditional courts have been rendered obsolete because their decisions are not supported by the laws of Zambia. We should lobby for more teeth so that the authority of the courts is respected.’ He considered it to be important that government recognises the courts because they are close to the people and quick at disposing of cases. He said chiefdoms are vast, which results in people failing to access constitutional courts to get justice. According to him, many offenders of the law in rural areas go unpunished because people are discouraged by long distances to both police stations and constitutional courts. He said when the courts are recognised by aligning them in the country’s judicial system, there would be improved delivery of justice in rural areas.

390 Governance Data Mapping: Assessing the Quality and Availability of Governance Data.
392 Bbuku-Chuulu, et al., Women and Justice in Zambia.
393 Ibid.
Chief Kanongesha also called for recognition of the traditional courts. He said that before independence, traditional courts were respected by colonial masters, who allowed them authority to administer justice in chiefdoms. He wondered why government had not enacted a law incorporating traditional courts into the judicial system:

Law enforcement agency officers are very few and our people are suffering from matters like domestic violence. I don’t know why government is not enacting a law to integrate traditional courts into conventional courts.

House of Chiefs Chairman, Chief Mazimawe, further said government should do something to give traditional courts authority to effectively deliver justice in chiefdoms.

The party manifesto of the Patriotic Front (PF) also advocates for the recognition of the traditional courts. One of the proposals under the judicial reforms in the manifesto is to establish and recognise traditional courts under traditional rulers as the first-level court below the local court in the judicial hierarchy. The PF rationale for this proposal rests on eliminating several perceived shortfalls: poor access to justice as current access to justice is unequal and costly to the poor especially in rural areas; the court system is not only congested but it is mired in corruption and bureaucracy; and poor public confidence as the public has lost trust in the judicial system, partly fuelled by daily experiences but also the politicisation of the judiciary in recent years, especially as seen in high profile cases involving corruption. Justice is not being done.395

F. Respect for court orders

Decisions of the courts in civil matters are generally respected due to the legal consequences of disobeying them. In both the subordinate court and High Court, if the defendant, in any suit, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property, or any part thereof, or to remove any such property from Zambia, the plaintiff may apply to the court, to call upon the defendant to furnish sufficient security to fulfil any decree that may be made against him in the suit, and, on his failing to give such security, to direct that any property, movable or immovable, belonging to the defendant, shall be attached until the further order of the court. A person directed by a decree or order to pay money or do any other act is bound to obey the decree or order without any demand for payment or performance, and, if no time is therein expressed, he is bound to do so immediately after the decree or order has been made unless the court shall extend the time by any subsequent order. A party in whose favour any judgment of a court for the payment of money is given may sue out of the office of the clerk of the court a writ of _fieri facias_ for execution of the same, if the same is not satisfied. 396

Thus the defendant who fails or refuses to obey a court order in a civil suit faces the danger of having their property seized and sold. This deters people from disobeying court orders.

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396 Order XLI of the Subordinate Courts Act and Order XLI of the High Court Act.
G. Mechanisms to assert rights outside the court system

Alternative dispute resolution mechanisms

There are currently three main forms of Alternative Dispute Resolution (ADR) mechanisms in Zambia namely, negotiation, conciliation/mediation (both non-adjudicatory as they are indeterminate) and arbitration (which is adjudicatory as it is determinate). Negotiation is often used by lawyers to achieve ex curia settlement of matters and thereby avoid litigation. This is attempted before or after the demand letter has been written by the lawyer. Lawyers can also advise clients to settle matters ex curia through negotiations prior to taking instructions. It is not clear to what extent this form of ADR is used.

However, the most common forms of alternative dispute resolution in use are mediation and arbitration. Arbitration has become popular due to an increase in industrial and commercial disputes. This form of ADR is not popular with lawyers since many are not familiar with it as it is not included in the training curricular of lawyers. This training gap is filled by institutions such as the Zambia Centre for Dispute Resolution which has trained a pool of arbitrators following the enactment of the Arbitration Act of 2000. The Zambia Centre for Dispute Resolution and the Zambia Association of Arbitrators (ZAA) have been incorporated and recognised as arbitral institutions to promote the use of arbitration. Arbitration is also regulated by the Arbitration (Court Proceedings) Rules 2001 that provide rules to regulate court proceedings in relation to arbitration with respect to matters that include applications for stay of proceedings, requests for interim measures of protection and procedures for challenging the appointment of arbitrators. Another statute that relates to arbitration is the Investment Dispute Convention Act enacted to give effect to the Convention on the Settlement of Investment Disputes between States and Nationals of other States to which Zambia is a signatory. The ZAA is regulated as a society with members from various professions such as engineers, lawyers and architects. The members are expected to abide with the Judicial (Code of Conduct) Act. Due to expeditious dispensing of matters through arbitration and the high case load in the judiciary, cases where arbitration clauses are part of the contract are referred from the judiciary to arbitration.

In Zambia the term conciliation is used interchangeably with mediation due to similarities between the two, although the former is a less formal process. Governed by Statutory Instrument No. 71 of 1997, mediation has taken root in the Zambian judicial sector and has become an integral part of the dispute resolution functions of the courts. Mediation was first introduced in the judicial process in 1997 through the High Court (Amendment) Rules 1997. A list of mediators trained and certified by the courts is kept by the mediation office. The list indicates the field or fields of expertise or experience of the mediators who should be of not less than seven years working experience in their respective field. The sessions are confidential and informal, parties can feel comfortable to discuss their case with candour, state grievances and reveal confidential settlement offers. Mediation sessions last about two hours. However, it may be necessary for the mediation to continue for a longer period of time or to be continued to another day.

397 This repealed the earlier British Arbitration Act of 1933 applicable to Zambia. The 2000 Act made provision for both domestic and international arbitration through adoption of the United Nations Commission of International Trade Law (UNCITRAL), 1985. The UNCITRAL is applicable to Zambia with modifications under section 8 of the Arbitration Act, 2000.
The mediator will first meet with the parties and their attorneys (or lawyers), if represented, and hear from all parties in the case. Most likely the mediator will spend time alone with the plaintiff and with the defendant. What the parties say to the mediator in these private meetings will not be shared with the other party, unless the party allows the mediator to do so. The mediator will help the parties to keep the discussions focused to talk about possible ways of resolving the dispute and to assist in drafting an agreement that is acceptable to all parties. No record of the mediation proceeding is supposed to be kept by the mediator and any documents prepared must be destroyed. Statements made during mediation are confidential and privileged and have no evidentiary value. The mediator cannot communicate with any trial judge with respect to the mediation. In the event of a settlement succeeding a mediation settlement stipulating the terms of the settlement is signed and has the same force and effect for all purposes as a judgement, order or decision and is enforceable in like manner. No appeal lies against a registered mediated settlement thereby ensuring finality of the matter.

From the year 2000, when mediation was introduced in Zambia, there have been 190 court-annexed trained mediators and the statistics of the cases that have been referred to mediation can be broken down as follows:³⁹⁸

- Cases referred (since inception, i.e. 2000 to date) to mediation: 1 219;
- Cases referred to mediation not settled: 199;
- Cases referred to mediation not mediated: 256; and
- Cases referred to mediation ongoing: 44.

The Director of Court Operations indicated that mediation has not been very successful because it lacks support from legal practitioners.³⁹⁹ The fee paid to mediators is only ZMK 500 000 (ZMK 500 Kwacha rebased; approximately USD 100) for the entire process of 90 days or more which, according to the Director of Courts and another senior legal practitioners, interviewed is too low for most legal practitioners.⁴⁰⁰ Amendments to the rules on mediation are being developed for sanctions to penalise persons who cause mediation to fail by not showing up or for other stipulated reasons. The rules will require a party who causes mediation to fail to pay the costs in the case. Not all mediators are legal practitioners as the training for mediators is open to other professionals. To encourage legal practitioners’ involvement in mediation it is recommended the rules relating to fees needs to be amended. There is also a need to introduce a code of ethics for mediators to prevent any unprofessional misconduct and to regulate the conduct of mediators.

**Commission for Investigations**

The Commission for Investigations is also referred to as the Office of the Ombudsman. It receives and investigates allegations of maladministration and act as a neutral mediator between aggrieved persons and the government. It is established under the Commission...
for Investigations Act (No. 20 of 1991) and consists of an Investigator-General and three commissioners appointed by the President. The commission has jurisdiction to inquire into the conduct of any person to whom the Act applies in the exercise of his office or authority or in abuse thereof whenever directed by the President. The commission investigates any allegations of maladministration unless the President directs otherwise. The Commission of Investigations Act applies to:

- Civil servants;
- Members of local authorities;
- Persons in any institution or organisation in which the government has a majority share or exercises financial or administrative control; and
- Members and persons in the service of any commission established by or under the Constitution or any Act of Parliament.

The commission, however, has no power to question or review the following:

- Any decision of any court of any judicial officer in the exercise of his judicial functions;
- Any decision of a tribunal established by law for the performance of functions in the exercise of such functions; or
- Any matter relating to the exercise of the prerogative of mercy.

The commission cannot investigate any allegation or complaint if the complainant had the opportunity to seek redress by means of application or representation to any executive authority or had an opportunity by means of an application, appeal, reference or review to or before a tribunal established by or under any law. It investigates matters when satisfied that in the particular circumstances of the case, it would be unreasonable to expect the complaint to resort to the above without fear, undue hardship, expense or delay. It submits a report of every investigation to the President who may take such decision in respect of the matter investigated as he thinks fit.

**Human Rights Commission**

The Human Rights Commission (HRC) was established following the 1996 constitutional amendments and is provided for in Part XII of the Constitution of Zambia. The establishment of a permanent human rights institution was recommended by the Human Rights Commission of Inquiry (popularly referred to as the Munyama Commission after its chairperson, Mr Bruce Munyama), which was appointed in 1992 to examine the human rights situation in the First, Second and Third Republics. The Commissioners are appointed by the President, subject to ratification by the National Assembly for a term of three years, which is renewable.

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401 Chapter 39 of the Laws of Zambia.
402 Section 4.
403 The Act does not apply to the President.
404 Section 10.
405 Article 125(2).
406 Section 5(2).
407 The reason for this is that part of the mandate of the Human Rights Commission is to investigate maladministration of
The functions of the HRC are provided for in the Human Rights Commission Act (No. 39 of 1996):^408

- Investigating human rights violations;
- Investigating any maladministration of justice;
- Proposing effective measures to prevent human rights abuses;
- Visiting prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems;
- Establishing a continuing programme of research, education, information and rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights; and
- Doing all such things as are incidental or conducive to the attainment of the functions of the commission.

In terms of the Act,^409 the HRC has powers to investigate any human rights abuses:

- On its own initiative; or
- On receipt of a complaint or allegation under the Act by
  - An aggrieved person acting in such person’s own interest;
  - An association acting in the interest of its members;
  - A person acting on behalf of an aggrieved person; or
  - A person acting on behalf of and in the interest of a group or class of persons.

Although it has no mandate to issue binding orders, the HRC has the following advantages:

- The process costs virtually nothing;
- There are no stringent rules and procedures as those found before the High Court;
- The atmosphere is not intimidating;
- Unlike under Article 28 of the Constitution, anyone can complain on behalf of a victim of human rights abuse under the Human Rights Commission Act, provided they have evidence; and
- The HRC has a mandate to go out and investigate and collect vital information other than that provided by the complainant.

The HRC also has powers to issue summons or orders requiring the attendance of any authority before the Commission and the production of any document or record relevant to any investigation by the Commission; and can question any person in respect of any subject matter.

^408 Section 9.
^409 Section 10.

Justice. While the principle of the independence of the judiciary is one of the pillars in the promotion and protection of human rights and fundamental freedoms, meaning that the judiciary at all levels should be left to discharge its functions and powers without undue interference or pressure from any quarter, it is still prudent in any democratic society that in those special circumstances where the judiciary or its members are found wanting in the discharge of their duties resulting in the violation of individual rights and freedoms, someone should be able to investigate and ensure that redress for victims of maladministration of justice is accorded.
under investigation before the Commission or require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission. The legal authority to compel cooperation of others, particularly government agencies, is a prerequisite for full operational autonomy of a national human rights institution such as the Commission, especially since it is vested with the power to investigate complaints.

The HRC drafted its own rules and its power is limited to making recommendations such as punishment of any officer found by the Commission to have perpetrated an abuse of human rights; where it considers necessary recommend the release of a person from detention; the payment of compensation to a victim of human rights abuse, or to such victim’s family; that an aggrieved person seek redress in a court of law or for other action as it considers necessary to remedy the infringement of a right. During this process the HRC may decide to hear oral evidence from the parties to the case. The parties are summoned to a public hearing and the Commission sits as a quasi-judicial tribunal to consider the matter. Members of the public are welcome to come and observe the public hearings.

H. Non-state mechanisms

The family
The family is a pivotal institution in dispute resolution. A study by WLSA-Zambia found that the family is often the first place where dispute among members are taken. The family forms the basic unit of society and, depending on the dispute, is usually the first point of call. Literature however indicates that the family is biased against women because the marriage gives the husband exclusive rights over his wife. The WLSA-Zambia study indicates further that the unfortunate thing with family as a dispute resolution mechanism is that it is also often the site of abuse. In such instances the family cannot be an effective mechanism.

The church
Most Zambians are Christians and respect their leaders and will often follow their decisions. The WLSA-Zambia study examined two churches that have the largest following one of which was the Roman Catholic Church. The study found that the Roman Catholic Church has a structure of small area communities composed of groups of members living in the same area and these constitute grassroots structures of the church. These are used to settle disputes and when they fail the matters are referred to the next level which is the parish council. Above this is the diocese court. The appellate system goes as far as the Vatican in marital cases.

The other church examined in the study was the United Church of Zambia where the congregation is arranged in areas according to residence. Each section has elders who attend to disputes of members in their respective area. The elders and the Minister in charge of the congregation constitute the pastoral committee. This is turn reports to the congregational council and disputes can rise through this hierarchy up to the consistory, composed of several

congregations and then to the presbytery and finally the synod. The mode of dispute resolution in the church is counselling and is not adversarial. This is aimed at maintaining relationships and reconciling parties.

**Non-governmental organisations**

There are several non-governmental organisations involved in dispute resolution. One has been the Legal Resources Foundation conceived in 1991 at the end of Zambia’s one-party rule. The Foundation introduced programmes for paralegal training and mobile legal clinics. Through various interventions the Foundation pioneered legal advice centres across the country that employed various dispute resolution mechanisms including mediation and negotiation. The Foundation also established a law firm, the Legal Resources Chambers, which offered free legal services to victims of human rights violations. Most cases involving police abuse of suspects and accused persons were settled *ex curia* and several others were litigated in the courts of law with awards for compensation or damages obtained for the applicants. The Foundation is however not as viable as it used to be, primarily because it is dependent on donor funding – as the development partners began to reduce funding, the Foundation and Chambers have had to reduce their operations.

Another organisation is the National Legal Aid Clinic for Women ran by the Women’s Rights Committee of the Law Association of Zambia. The clinic became operational in 1990 and provides legal services to indigent women and children. The clinic has been involved in provision of legal advice, litigation and outreach programmes with the aim of improving women’s access to justice. The Young Women’s Christian Association (YWCA) of Zambia has also been involved in dispute resolution and provided for many years the only shelter for battered women in the country. The YWCA used methods of reconciliation and negotiation and provided referral services to other organisation.
Development partners

Development partners are accountable not only to their domestic constituents but the governments they are assisting, and by extension, citizens of that country. This section is intended to assess the manner in which donors provide assistance to the justice sector, and whether this is done so according to principles of transparency, accountability and with respect for international human rights standards.

**A. Access to information about development assistance to justice sector**

The former Department of Economic and Technical Cooperation in the Ministry of Finance and National Planning, mandated to mobilise external resources for Zambia, was downgraded to a section within the newly established Economic Management Department in the Planning and Economic Management Division. The purpose and mandate of the ETC Section has also been expanded. The section must deliver accurate and timely information regarding Cooperating Partners’ support to the country. In the interest of achieving this, ETC in 2004, entered into an agreement with the United Nations Development Programme (UNDP) to establish an Internet-based database and Aid Management Information Technology Unit to track aid flows into the country. The Internet-based database is known as the Zambia Development Assistance Database.

This Internet-based database is a web-based information collection, tracking, monitoring, evaluation and planning tool for use by national governments and the broader assistance community, including bilateral donors, international organisations and non-governmental organisations. The objective of this is to improve information exchange on planned and actual donor resource inflows, to promote alignment of assistance under the Joint Assistance Strategy

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for Zambia (JASZ) in line with the National Development Plans and in the context of the Aid Policy and Strategy for Zambia. It was also designed to assist the Zambian government to build the capacity to effectively track aid support to and within the national budget. It is however difficult to assess the system without a systematic survey of the extent of its utilisation. The database is outdated and little information about available development assistance is presented. Overall information about development assistance to the justice sector is not easy to obtain.

B. Development assistance to justice sector

Although the justice sector is cardinal for the rule of law, which itself has implications for effectiveness of development assistance and development in an aid-dependant country such as Zambia, little of this assistance has been directed to the justice sector.\textsuperscript{414} Nevertheless, there have been a number of assistance programmes that have included support to the sector. An example of this is United States (US) assistance which has mostly focused on democracy and governance, with beneficiaries including the Anti-Corruption Commission, the Electoral Commission of Zambia and non-governmental organisations (NGOs) working in these areas.\textsuperscript{415} The United States Agency for International Development (USAID), Zambia’s support for democratic governance, aligns with the government of Zambia’s Sixth National Development Plan (SNDP), which aims to provide a democratic system of governance that creates the necessary conditions for markets to function correctly, for the efficient and effective delivery of basic services and facilitation of civil society participation in decision-making.\textsuperscript{416}

Similarly, the Governance Programme, with support from Canada, the United Kingdom Department for International Development (DFID), the European Commission, Finland, Netherlands and USAID seeks to support the government of the Republic of Zambia in meeting the development goal of promoting human rights, dignity of individual citizens and inclusive governance. In this regard the programme took a three-pronged approach aimed at:

- Supporting national efforts in development and implementation of a national Constitution that will foster human rights, inclusive governance, greater separation of powers and accountability among the organs of the state (Pillar 1: National Dialogue on Development Reforms);
- Transforming selected key national institutions into accountable institutions with greater capacity of increasing delivery of public services and human rights to vulnerable populations (Pillar 2: Institutional Strengthening for Human Rights-Based Service Delivery); and

\textsuperscript{414} E.g. while USAID annual assistance to Zambia is about USD 300 million, most of it is concentrated in the health sector, economic growth, and education.

\textsuperscript{415} US assistance focuses on enhancing the credibility of elections by increasing participation through improving the voter registration process, assisting the Electoral Commission and supporting organisations engaged in election monitoring and observation. In the governance sector under the Governance Secretariat (GS) the Anti-Corruption Commission falls under the thematic area of Accountability and Transparency. Transparency International Zambia is one of the civil society organisations that the GS closely works with and it falls under the thematic area of Human Rights.

The project interventions include the following:

- Increasing domestication of international conventions and protocols that Zambia has acceded to;
- Increasing national capacity for implementing, monitoring and reporting of national plans, policies and reforms;
- Promoting transformational leadership and mindset change in the civil service and the community in general; and
- Fostering an environment that will promote greater public engagement in democratic processes and public access to information at the national and local levels.

Expected benefits of the project include increased access to human rights and public services by vulnerable groups and changes in attitudes among the public servants.

Danish support to good governance in Zambia has focused on three of the six areas of the governance programme: facilitation and coordination of governance initiatives, accountability and transparency and administration of justice. Denmark also supports civil society and the total budget for 2010–2012 was DKK 90 million.

The government of the Republic of Zambia – represented by the Ministry of Justice, the Ministry of Home Affairs and the judiciary – also has a Memorandum of Understanding with the European Union (EU), the Royal Danish Embassy and German Technical Cooperation (GTZ), which provides for their support to the justice sector in Zambia over the next three years, 2011–2013. The Memorandum of Understanding provides the framework for support, which sees the EU contributing EUR 6 million, the Danish International Development Agency (DANIDA) EUR 3.85 million and the GTZ EUR 1.5 million to the programme over the next three years.

Under the 10th European Development Fund Country Strategy/National Indicative Programme for Zambia, an allocation of EUR 25 million has been set aside for the governance programme.

The EU contributes EUR 7.4 million to a multi-donor Electoral Cycle Support Project managed by the UNDP. This project supports the reorganisation of, and the strengthening of systems within, the Electoral Commission of Zambia and Department for National Registration, Passports and Citizenship. One of the major outputs of the project will be more efficient, accessible and accurate civil and voter registration systems. Civil society, media, political parties and women candidates will also benefit from the project, which takes a holistic and long-term approach to the electoral system and which does not simply focus on individual election days.

The EU in Zambia contributes EUR 1.6 million to a joint United Nations (UN) programme in support of the government’s National Policy and Plan of Action to Combat Human Trafficking. Trafficking is not widely recognised as a problem in Zambia and the joint programme tackles this through an intensive awareness creation campaign. A wide range of stakeholders (including the Zambia Police Service, the Immigration Department, trades unions,
employers organisations and civil society organisations) will be involved in improving the skills needed to deal with the problem as well as to put in place structures to support the victims of trafficking, who are most often very vulnerable children and women.

In 2010 the EU in Zambia, through the European Initiative for Democracy and Human Rights, made EUR 300 000 available for civil society organisations and other human rights bodies to support their work on the defence of human rights in Zambia. The priorities for this support included advocacy on the death penalty, addressing violations of the rights of those in custody and the elimination of rights abuses amongst vulnerable groups, especially women.

C. Coordination mechanisms for development aid

The Zambian government’s Aid Policy and Strategy 2007 and the Fifth National Development Plan (FNDP) (the first in a series of development plans to bring into operation the National Long Term Development Plan – Vision 2030), provided the overarching development framework for the Cooperating Partners’ (CPs) alignment and harmonisation. The first Joint Assistance Strategy (JASZ I) ran from 2007 to 2010 and was developed to help CPs manage their development cooperation in line with the Paris Declaration and the FNDP and improve the division of labour between the CPs.420 One shortcoming of the JASZ I was that harmonisation and alignment were limited. It also had limited effectiveness in enhancing government ownership, building mutual accountability between government and CPs and managing the results.

The second Joint Assistance Strategy (JASZ II) is aimed at supporting the SNDP from 2011 to 2015 and also provides a medium term strategic framework to align development to Zambia’s Aid Policy and Strategy.421 In respect of governance CPs support will focus on the goals of enhancing accountability, improving access to justice and promoting respect for human rights; development of a vibrant democratic society through support to elections and increased public participation. All these areas form part of the justice sector. The CPs that are part of JASZ II are the African Development Bank, the EU, the governments of Canada, Denmark, Finland, the Federal Republic of Germany, Ireland, Japan, the Netherlands, Sweden, United Kingdom and the United States of America, the Norwegian Ministry of Foreign Affairs, the United Nations and the World Bank.

The Zambian model of the JASZ involves dialogue and consensus and high commitment of government, donors and other stakeholders. The JASZ is seen as the starting point (and not an end) for the process of facilitating the accommodation of each other’s constraints and difficulties between the government and donors in translating the JASZ partnership principles into practice. In terms of aid effectiveness, the JASZ process is seen as an effective mechanism to reduce the burden of the government to coordinate the donors present in every sector with different aid modalities, approaches and practices. In terms of development planning and programming procedure, the JASZ appears to be, as anticipated by donors and the government, a useful planning assistance tool for aid delivery that will reflect the harmonisation, coordination and alignment of principles.

420 See Joint Assistance Strategy for Zambia I.
421 See Joint Assistance Strategy for Zambia II.
There is an apparent attempt by justice institutions to coordinate with each other through the MoJ, which is the home of the Governance Secretariat and Human Rights Democratisation Committee and the Access to Justice Programme, two thematic areas under which all justice institutions are represented. Generally, since the FNDP, Zambia coordinates development aid through Sector Advisory Groups. One of these is the Governance Sector Advisory Group, which brings together representatives from 17 public sector and civil society organisations, including from the legislative and judicial branches of government, in an effort to coordinate work to improve Zambian governance.422

UN Zambia is contributing to national programmes on governance through empowering state institutions, civil society and individuals to effectively participate in democratic processes. The UNDP leads the UN resident coordinator system in the pursuit of UN reform at the country level. The UNDP is not a donor. The neutral and cross-disciplinary character of the UNDP makes it well suited to convene and facilitate multi-stakeholder efforts in support of national priorities, including civil society and the private sector.423 Such a role enables national counterparts to focus on debating, defining and leading the national agenda, and provides donors with a convenient vehicle for dialogue, as well as the transparent and coordinated management of support. The Governance Group brings together all donors working on governance and meets on a monthly basis to discuss governance related issues. It is chaired by the UNDP and the DFID.424

D. Development aid and promotion of human rights
Norway’s policy towards Zambia has been discussed recently in its Evaluation Report 7.97.425 This report was produced for the Ministry of Foreign Affairs in Oslo and used Zambia and Zimbabwe as case studies. However, it underestimates the impact of conditionality on the government’s human rights practice in the Zambian example. The consultant Hilde Selbervik failed to talk to representatives of civil society and NGOs, basing much of her research on diplomatic sources.426 The researcher was however unable to ascertain to what extent development assistance in general has been linked to any sort of human rights conditionality or how effective it has been.

422 This includes some civil society organisations or private sector; e.g. the chief executive officer of the Zambia Association of Chambers of Commerce and Industry is a member of the government’s governance sector advisory group.
424 Ibid.
426 Ibid.
## Annexure

### List of international treaties signed and ratified by Zambia

<table>
<thead>
<tr>
<th>Treaties/Covenants</th>
<th>Signed</th>
<th>Ratified</th>
<th>Protocols</th>
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<td>1st Optional Protocol to the ICCPR</td>
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<td>Optional Protocol to the CRC on the Involvement of Children in Armed Conflict</td>
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