

The Criminal Justice System in Zambia

Enhancing the Delivery of
Security in Africa

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Foreword

Just over six years ago, seven African non-governmental research organisations - the African Security Dialogue and Research, Africa Peace Forum, Human Rights Trust of Southern Africa, Institute for Human Rights and Development in Africa, South African Institute for International Affairs, West Africa Network for Peace Building, and Institute for Security Studies - met in Pretoria at the invitation of the Institute for Security Studies. They agreed to establish a network to review and monitor the performance of African leaders in respect of decisions on broad human security issues that were taken at OAU and AU summits. This marked the birth of the African Human Security Initiative (AHSI) a year later. The University for Peace Africa Programme (UPEACE) has since joined the original seven organisations.

Because of the success of the studies and particularly the cooperation and assistance of the countries monitored - Algeria, Ethiopia, Ghana, Kenya, Nigeria, Senegal, South Africa and Uganda - the above organisations decided to embark on a second phase of the African Human Security Initiative Project. The AHSI decided to complement the formal New Partnership for Africa's Development / African Peer Review Mechanism (NEPAD/APRM) process by focusing on the criminal justice system in five selected countries, namely Benin, Mali, Sierra Leone, Tanzania and Zambia.

Criminal justice systems in Africa tend to work slowly and are encumbered with bureaucratic procedures that impede the effective delivery of justice. Crime and defective justice systems have slowed down development and prevented Africans from realising their full developmental potential. As the links between crime, the criminal justice systems, democracy and development in the region have remained largely unexplored, AHSI decided to draw attention to the need for reforms in the criminal justice system that will enhance human security.

Over the years, the African Union and its predecessor, the Organisation of African Unity, have adopted far-reaching decisions in the form of conventions, treaties, agreements, resolutions or declarations, the implementation of which should have had far-reaching and significant impacts on enhancing the quality of criminal justice systems of countries in the region. Among others, these decisions touch on good governance and the respect for human rights and peoples' rights; the eradication of discrimination against women; the protection of the rights of the African child; and economic growth and poverty reduction.

The African Human Security Initiative is indebted to the many researchers in the above five countries who have dedicated their valuable time in producing the country reports which, apart from complementing the work of the African Peer Review Mechanism, also provide governments with empirical evidence on the status of criminal justice and its impact on political processes in their countries.

In order to maintain the momentum arising from these studies and remain focused on the need to remind African leaders to comply with their commitments taken at summit level, the African Human Security Initiative will encourage dialogue and public awareness of the studies - particularly those on crime and criminal justice - while focusing on their impact on democracy in the region.



Ambassador Ochieng Adala
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Acronyms and initialisms

ACC	Anti-Corruption Commission
AHSI2	African Human Security Initiative 2
APRM	African Peer Review Mechanism
ARRS	Arrest Reception and Referral Services
CFC	Child Friendly Court
CRC	Convention on the Rights of the Child
DEC	Drug Enforcement Commission
DPP	Director of Public Prosecutions
IC	Integrity Committee
IOM	International Organisation for Migration
ISS	Institute for Security Studies
JCTR	Justice Centre for Theological Reflection
K	Zambian Kwacha
LRF	Legal Resources Foundation
MMD	Movement for Multiparty Democracy
NEPAD	New Partnership for Africa's Development
NLACW	National Legal Aid Clinic for Women
PPCA	Public Police Complaints Authority
RDC	Resident Development Committee
SACCORD	Southern African Centre for the Constructive Resolution of Disputes
SADC	Southern Africa Development Community
TI-Z	Transparency International – Zambia
WLSA	Women and Law in Southern Africa
YWCA	Young Women's Christian Association
ZRA	Zambia Revenue Authority

Executive summary

INTRODUCTION

The African Human Security Initiative (AHSI) is a consortium of organisations that has taken the initiative to emphasise human security in Africa. AHSI has used the opportunity created by the peer review concept to complement the formal African Peer Review Mechanism (APRM) process of the New Partnership for Africa's Development (NEPAD) to undertake a focused review of the criminal justice system in selected countries identified for the APRM. Through this process, AHSI seeks:

- To complement the work of the APRM
- To provide governments with empirical evidence on the status of criminal justice and its impact on political processes in their countries
- To work with governments in the development of a set of realistic and informed recommendations for each area and help bridge the gaps between national commitments and implementation
- To identify inherent structural and other weaknesses in the criminal justice systems and to encourage policy dialogue and public awareness of the broader implications of crime in the consolidation of democracy
- To support development and build capacity among a core network of partners in an area where civil society organisations have traditionally been the weakest in Africa, namely work on crime and justice matters

Under the programme, five countries – Zambia, Tanzania, Benin, Mali and Sierra Leone – were selected for review in 2007 and 2008. Zambia is in transition towards the consolidation of its multiparty democracy that was reintro-

duced in 1991 after two decades of ruinous one-party rule. The country's crime and criminal justice system is also in a transitional phase.

As is the case in a number of post-colonial African countries, the most distinctive feature of Zambia's legal system is its duality, comprising general or common law and customary or traditional law. These systems, which exist parallel to each other, create a troublesome paradox, for although general law is the constitutionally recognised law, it is known and accessed by a minority of the population. The majority of Zambians – mostly members of Zambia's many ethnic groups who reside in the rural areas – know, understand and access customary law which is informal, flexible and geared to the needs of the people it serves. And yet, the traditional courts that administer customary law (local courts do so as well) are not recognised by statute as part of the judiciary and even their existence is not acknowledged. This dualistic and asymmetric legal system creates problems in the delivery and administration of criminal justice in the country.

Zambia has made great progress since the re-establishment of a multiparty democracy - particularly since the late President Levy Mwanawasa took over in 2002 - but there are still serious gaps in its criminal justice law reforms with accompanying major challenges. Despite real progress, capacity gaps remain serious and so do corruption and human rights violations in the treatment of prisoners. One of the biggest problems is overcrowded prisons. In short, Zambia needs to implement some major reforms in its criminal justice system to enhance efficiency and effectiveness.

METHODOLOGY

The review and assessment of the efficiency and effectiveness of the criminal justice system in Zambia was undertaken in a number of stages:

- Preparation of individual questionnaires and action plans based on a master questionnaire provided by the AHSI secretariat
- Holding a country workshop to allow the researchers to meet one another, review intended methodologies and plan possible collaboration in the field
- Collection of data and preparation of preliminary reports for discussion and review

Research teams adapted both the qualitative and quantitative research designs to their own needs. A combination of data collection techniques was used including a desktop study, interviews, observations, written questionnaires and case studies. The inputs of key respondents and members of the public were central across all the themes. Face-to-face interviews and focus group discussions were conducted throughout the country. Appropriate semi-structured questionnaires were used for data collection from representatives of public institutions, resident development committees, non-governmental organisations (NGOs) and other key participants.

Purposive samples of representatives from the various agencies and/or NGOs whose activities relate to public accountability, transparency and respect for human rights, depending on the specific aspect or areas within the criminal justice system, were used for the reviews. A total of 1 000 respondents participated in the reviews, ranging from government officials and members of resident development committees and the general public to representatives of NGOs, UN agencies and people in the legal profession. (However, this does not mean that the findings are nationally representative and can be generalised when assessing the criminal justice system in Zambia.)

The study included several follow-up field visits to clarify certain issues. Apart from physical follow-ups, participants were contacted by letter, telephone and e-mail to improve the response rate and increase accuracy. The fieldwork took about four months to complete (June–September 2007). The key findings and recommendations are summarised below.

CRIME

Key findings

- Zambia, like many other countries, is grappling with increasing crime. However, it was very difficult to access police statistics on crime, as this information is not being released to the public. The occurrence of criminal activities is much greater in urban areas, particularly in areas along the railway line. High unemployment levels, the influx of people to urban centres, and an inadequate police presence are some of the contributing factors. In all provinces, the proportion of offences taken to court is low, as is the proportion of offences resulting in convictions.

- Corruption is a serious problem in Zambia and the country consistently has a very low ranking on the Corruption Perception Index. The general public also rated corruption as a serious challenge confronting the country. Corruption in the electoral process and public service delivery seems to be the citizens' greatest concern. Most expressed fears that corruption has permeated all sections of Zambian society and feel that bribery and corruption have become characteristic features of Zambian life.
- The Anti-Corruption Commission (ACC) is both under-resourced and under-skilled, Members of Parliament lack the capacity to discharge their functions effectively and the offices of Auditor General and Ombudsman are effectively moribund. This is attributed to a policy of deliberate underfunding coupled with a failure to punish corrupt officials.
- Corruption is practised by people from all walks of life, but it is particularly worrisome that top public officials either participate in corruption or seem to condone it. A culture of impunity has developed and corruption has permeated government structures from the Presidency down to the lowest-ranking public service employee. The conduct of most officials in the public service and the lack of effective internal controls in the ministries and government departments are major contributing factors to the prevalence of corruption.
- The country continues to witness an increase in the incidence of drug trafficking and money laundering. However, information on the problem is scant. These issues need to be researched in more depth than was possible in this study.
- No empirical research has been conducted on human trafficking activities in Zambia, but the problem exists and there is also evidence that human trafficking syndicates are operating in the country. Owing to its relatively weak economy, Zambia is a source and transit country rather than a destination for human trafficking. In recognition of the problem, the Zambian government, through the Ministry of Home Affairs, is developing a national policy to combat human trafficking.
- Illegal migration is a problem. The unstable political climate, coupled with poor economic conditions in some of the country's neighbouring states, adds to illegal migration. Lack of capacity to effectively monitor the country's porous borders with neighbouring states exacerbates the problem.
- There is also a historical perspective to illegal migration in Zambia. The colonial borders physically separated people belonging to the same clan, tribe, and/or chiefdom, but the ties remain and contribute to illegal migration. In view

of this it is not surprising that the review did not find any deep-seated hatred of illegal migrants among the participants – most had a humane and accommodating view of illegal migrants living and working among the locals.

- Organised crime in Zambia is not well documented and no clear details of the nature and/or trends of such a phenomenon could be discerned. Criminal gang activity has manifested itself in various aspects, including motor vehicle theft, assault and aggravated robbery, drug trafficking, human trafficking, money laundering, illegal poaching, and trafficking in military firearms.

Recommendations

- The lack of data on crime and the need to improve crime information management systems are clearly prerequisites for any further action.
- Because corruption is more likely to occur in situations where officials receive low salaries and conditions of service are poor - especially in the public sector - remuneration levels and the conditions of service of public sector employees should be improved.
- The government should design programmes aimed at sensitising the citizenry on the dangers of harbouring illegal migrants.
- National and provincial offices of the ACC need to be adequately financed, staffed and equipped and there should be renewed political will and commitment towards ending corruption. The Anti-Corruption Commission Act, 1996 (Act 46 of 1996) should also be reviewed to provide for the protection of whistleblowers.
- Current initiatives being undertaken by the government in collaboration with the International Organisation for Migration to curb human trafficking need to be strengthened. Similarly, sensitisation programmes being undertaken by the Drug Enforcement Commission (DEC) must be intensified and instituted countrywide instead of being confined mainly to urban areas.

POLICING

Key findings on the Zambia Police Service

- It was very difficult to gain access to information on policing in Zambia as much of the information is deemed not to be for public consumption. This is

also the case with information held by police authorities on criminal cases involving human rights violations by police officers.

- The legislative and constitutional provisions on the ZPS meet the most basic requirements of the rule of law in the sense that the laws are public knowledge, clear, apply equally to everyone, and are aimed at upholding political and civil liberties. However, the rule of law is threatened by emergency legislation, and the Preservation of the Public Security Act, 1960 (Act 5 of 1960) for example gives the President extraordinary powers to detain any individual indefinitely.
- The Zambia Police Service lacks adequate operational capacity and consists of only 13 000 officers, less than half the ideal complement of 27 000 officers. The current recruitment drive is inadequate to attract the required numbers.
- The Zambia Police Service lacks investigative capacity and because of the lack of credible evidence, mainly resulting from poor investigation, some crimes have not been prosecuted. Linked to this is the unavailability of forensic capacity; forensic samples are sent to the University Teaching Hospital or abroad for analysis. The limitations translate into a relatively low successful prosecution rate.
- Recent reforms through for example the Zambia Police (Amendment) Act, 1996 (Act 14 of 1996) have sought to target institutional weaknesses. Victim support units have been established to address the needs of specific target groups such as women, children and the aged. The units have made notable progress in spearheading a vigorous education and sensitisation campaign aimed at changing the mindset of the police and public towards vulnerable persons.
- Zambia's private security industry has been growing rapidly. There is not much legislation aimed directly at this section of crime prevention in Zambia and regulations aimed at holding the private security industry accountable for its actions are also weak.
- There have been efforts to strengthen the oversight mechanisms and the Zambia Police Service – among others - is subject to parliamentary oversight. Other measures include:
 - The designation of custody officers to improve the conditions of police detention
 - The establishment in 2003 of the Police Professional Standards Unit to investigate corruption, arbitrary arrests and detention, and other unprofessional behaviour within the Police Service

- The establishment of the Public Police Complaints Authority in 2003 with powers to investigate complaints by the public against the police. The Authority submits its findings and recommendations to the Director of Public Prosecutions, Inspector General of Police and Anti-Corruption Commission
- The establishment of the Commission for Investigators under an Investigator General who deals with complaints of abuse of power such as arbitrary decisions, improper use of discretionary powers, unnecessary or unexplained delays, misapplication and misinterpretation of laws, etc
- Despite the many oversight mechanisms, the system remains weak. The Police Professional Standards Unit has dealt with only three cases since its inception, and since the establishment of the Public Police Complaints Authority it has received 825 complaints but has made only 45 rulings and dismissed only 13 officers for abuse of authority. Part of the problem is that many citizens do not know their rights or where and how to seek redress.
- There is still a high level of police brutality and abuse of human rights by police officers.
- The police training curriculum has recently been reviewed to include human rights law as a subject. The entry qualification for police officers was increased to a Grade 12 full certificate.
- There is a rather negative public perception of the Zambia Police Service. Half the Zambian participants in this study were not satisfied with the performance of the police force. Seven in ten Zambians polled were dissatisfied with the way in which the police handled crimes. The public complains of poor or no response to crime calls, a lack of professionalism in handling offenders, the use of unnecessary violence in apprehending suspects, and a violation of the rights of persons in police custody. As a result, the public has lost confidence in the service and it does not seem to have much credibility or integrity.
- Factors which have impacted negatively on people's access to law enforcement services largely stem from shortcomings inherent in the service. These include (i) a shortage of police officers, (ii) police arriving late at crime scenes, (iii) the long distances people have to travel to police stations or police centres, (iv) perceived corruption in the service, and (v) lack of protection of whistleblowers.

- Despite the overall negative perceptions of the police, it was found that the public image of the Police Service has been improving, largely as a result of the operationalisation of structures created through reforms such as victim support units and the Police Public Complaints Authority.

Recommendations on the Zambia Police Service

- While recent reforms - particularly the establishment of victim support units and the Public Police Complaints Authority - are to be commended, findings show that there is limited awareness among members of the public of their rights and of the functions of these structures. To maximise the benefits of these institutions and reduce police victimisation and violation of people's rights, an awareness campaign should be developed and implemented countrywide.
- Lack of or limited capacity in many key areas was found to be one of the major weaknesses of the public law enforcement agencies that formed part of this review. There is a particular need to strengthen capacity in the areas of policing, upholding the rule of law and respecting human rights. Furthermore, professional training of police officers should include modules on accountability and public trust.
- The construction of a reliable and modern laboratory for forensic analysis is critical to the effective functioning of the Zambia Police Service.
- To offset the impact of HIV/AIDS, appropriate measures should be taken, such as (i) training officers to replace those who have died from AIDS and planning for those who are infected by the HIV virus; (ii) embarking on effective HIV/AIDS awareness programmes; (iii) conducting a baseline study on HIV/AIDS in public institutions; and (iv) mainstreaming HIV/AIDS in the operations of security organisations to protect the staff and their communities.
- The Inspector General of the Zambia Police Service should be appointed by an independent body such as a parliamentary committee or an appropriate service commission and ratified by Parliament.
- Current oversight mechanisms such as the Public Police Complaints Authority need to be strengthened.
- An independent police complaints authority should be established to ensure effective investigation of human rights violations by police. To be truly

effective, such an authority should have full powers under law to deal with complaints, including enabling powers to order the release of persons held unlawfully and powers to order immediate access to police dockets, statements and post mortem examination reports.

- Domestication of the ratified Convention Against Torture is essential, and evidence shown to have resulted from torture should be inadmissible in a court of law, in conformity with article 15. This can be done partly by criminalising acts of torture by members of government law enforcement agencies and other security institutions.
- It is recommended that a research facility or criminal justice inspectorate be established to provide regular reports to Parliament on the state of policing and the criminal justice system in the country.

POLICING OF DRUGS AND MONEY LAUNDERING

Findings

- The goal of the Drug Enforcement Commission (DEC) is to control and prevent the illegal production of narcotics as well as the abuse of narcotic drugs and psychotropic substances, to combat money laundering, and to provide rehabilitation services for drug addicts. It was found that drug abuse and trafficking is receiving attention and there seems to be a reasonable level of commitment on the part of the commission to combat the problem.
- The government, through the Bank of Zambia, has issued anti-money laundering directives to all banks and financial institutions operating in Zambia.
- The review noted that the Drug Enforcement Commission enjoys good inter-agency cooperation with other law enforcement agencies locally, including the police and the ACC.
- Limited capacity at the Drug Enforcement Commission is regarded as the single greatest impediment to the improvement of public access to the institution. Generally, public knowledge of the commission was found to be fair. Numerous educational campaigns that the commission has conducted over a number of years have resulted in greater public awareness of the dangers of dealing in illicit drugs and money laundering, and the benefits of getting rid of these evils.

- The public is concerned about long delays in disposing of cases. Indeed, some members of the public questioned whether the Drug Enforcement Commission has the capacity to deliver services as expected. Another cause for public concern is the commission's lack of facilities for the rehabilitation of drug abusers. It would seem that the commission is only interested in securing convictions and not in providing a lasting solution to the problems of drug trafficking and drug abuse. This argument is backed by the high recidivism rate among persons convicted for drug-related offences.
- There are also delays in concluding investigations, violations of human rights, suspected coercing of witnesses to secure convictions, brutality, and abuse of power by law enforcement officers from the Drug Enforcement Commission and Anti-Corruption Commission.

Recommendations

- It is recommended that Drug Enforcement Commission undertake increased sensitisation of the general public on the gravity of drug cultivation, utilisation and trafficking by strengthening its awareness programmes.
- To ensure effective functioning of the Zambia Police Service and Drug Enforcement Commission it is vital that a reliable and modern laboratory for forensic analysis be established.
- To strengthen the legal framework on combating drugs trafficking and money laundering, the Drug Enforcement Commission should be provided for in the Constitution to safeguard its existence and its chief executive officer should be appointed by an independent body and the appointment ratified by Parliament. The commission should become autonomous to prevent political interference and a mechanism should be established for the protection and rewarding of whistleblowers.
- A complaints authority should be established for the Drug Enforcement Commission to serve as an oversight mechanism. This will provide the necessary checks and balances and may serve as a deterrent to abuse of power and violation of people's rights. This role could be fulfilled by the Police Public Complaints Authority.
- The current penalties for convicted offenders on charges of corruption, money laundering and trafficking in drugs are inadequate deterrents and therefore all penalties and sanctions should be reviewed. More severe

sanctions should be offset by increasing the capacity of rehabilitation facilities for drug addicts.

PROSECUTORIAL SERVICES

Key findings

- In Zambia, the power to institute and undertake criminal proceedings is vested in the Director of Public Prosecutions (DPP). The DPP can enter a *nolle prosequi* to stop proceedings and has the responsibility to sanction or consent to the institution of certain types of charges. Under the Kaunda and Chiluba regimes, the authority of the office of the DPP was eroded because of its reluctance to investigate government excesses. While newer, semi-autonomous institutions have been set up, the DPP has remained an integral part of the executive, resulting in general concern about the powers of the DPP to dispose of cases through *nolle prosequi*.
- The DPP's organisational reach is limited and it has no representation in five of the country's provinces. This may partly explain the level of public ignorance of this office. Prosecution in the country is yet to be coordinated under the direct supervision of the DPP.
- The way in which the DPP is currently appointed places excessive power in the hands of the President and undermines the independence of the institution. The public perception is that the office of the DPP lacks prosecutorial independence in criminal cases involving high-ranking public officials. The DPP enjoys security of tenure but the prosecutors in his office do not.
- The efficiency and effectiveness of the DPP is compromised by the fact that the office is not funded directly by Parliament but through the Ministry of Justice.
- The majority of the DPP's prosecutions are not undertaken by lawyers but by police officers who are appointed as prosecutors under his authority and only prosecute cases in lower courts. Since police prosecutors are not trained lawyers, they do not perform very well against well-qualified defence attorneys.
- The DPP's office lacks capacity partly because of the location of public prosecutors in different institutions. This is perceived to have a particularly

negative impact on the ability of the DPP's office to deal with prosecutorial matters effectively and expeditiously.

- In order to improve the efficiency and effectiveness of the DPP's office and safeguard its independence, the government in 2000 produced a comprehensive national criminal prosecutions policy as a first step towards building a national prosecution service that would be open and honest in its dealings with the public. However, its recommendations have not yet been implemented.

Recommendations

- The draft national criminal prosecutions policy should be finalised and implemented as a matter of urgency.
- Legislation governing the appointment of the DPP should be promulgated which guarantees the independence of the DPP's office.
- The government should consider financing the DPP's office directly through Parliament rather than through another government ministry. This will enhance financial autonomy and the independence of the DPP's office. In this way security of tenure will be backed by the necessary financial autonomy to plan and execute decisions without fear of reprisal.
- In order to enhance accountability for and transparency in the decisions made by the DPP, the legislation should be reviewed to ensure that reasons for entering a *nolle prosequi* are made public.
- Standards should be harmonised by bringing all public prosecutors under one umbrella institution.
- The government, in collaboration with non-state actors working in the area of human security, human rights and the maintenance of good governance, should institute programmes aimed at sensitising the general public on the functions of key constitutional offices such as the DPP.

THE COURTS

Key findings

- Zambia has a dual legal system made up of general law and customary law. This duality applies to a limited extent to criminal cases. Although most

offences are dealt with in terms of statutory law, some minor offences may be handled under customary law. The general law system is conceptually superior to the parallel traditional customary law system. However, the concepts of crime and punishment in the customary law system are known and understood by the majority of the population.

- Equality before the law and the right to fair trial are guaranteed in the Constitution.
- Zambia's local courts, the courts of first instance for customary law matters, apply very little procedure and lean more towards substantive justice. Consequently, their handling of criminal cases is limited to the simplest and most common offences. Despite the substantial difference in approach between the local courts and the higher courts of record, the former are considered to form an integral part of the formal court system.
- Proceedings are held in open courts in order to ensure transparency and are only held in camera if it is in the interests of justice. Very few offences - only murder, armed robbery and treason - are non-bailable.
- The 464 local courts are the fastest when it comes to resolving disputes, partly because they have the simplest procedure. Since the presiding justices have no knowledge of any law other than customary law, the local courts are unlikely to handle the trial of specialised offences such as corruption.
- With regard to court performance, there is a low rate of disposal of cases resulting in a large backlog that grows every year. For example in 2005, of 98 709 offences reported to the police nationwide, only 38 858 cases were taken to court. Of these, 4 415 were carried over to the next year. These figures also indicate that levels of crime are relatively high for a population of 12 million. In addition, some 40 judges are insufficient to service a nation of 12 million people.
- The legal system in Zambia has a limited ability to address high crime levels because of inherent structural problems and resource constraints. One of the reasons for the poor performance of the courts is a lack of infrastructure and human resources. Human resource restraints start with poor conditions of service for magistrates – they are employed on contract rather than on a permanent, pensionable basis.
- The poorest infrastructure and conditions of service are found at local court level. Local courts are serviced by justices who have not received any formal training.

- Although the Legal Aid Board has been established as a body corporate, it is still linked to the Ministry of Justice, which is responsible for recruiting, disciplining and determining the conditions of employment of legal aid personnel. The ministry is also still responsible for mobilising and disbursing resources to the board. The woes of the board are exacerbated by the fact that poor conditions of service prevent it from attracting and retaining the services of lawyers.
- The Legal Aid Board tends to limit the granting of legal aid to accused persons facing serious criminal charges, mostly in the High Court. The board therefore handles a limited number of civil cases.
- NGOs providing pro bono legal services have been formed to alleviate the prohibitive costs of legal services and improve access to justice for the poor. The National Legal Aid Clinic for Women (NLACW) and the Legal Resources Foundation (LRF) are the principal organisations active in this field. However, the capacity of the NLACW to provide significant relief is limited as it is donor dependent and does not have the logistical support required to meet the challenges of providing legal services to the poor.
- The death penalty is still on Zambia's statute book.
- Judges enjoy adequate independence at both institutional and individual level. Independence of the judiciary is secured through an objective process of appointment and secure terms of tenure of office and termination of employment. However, significant differences exist with regard to these aspects for judges and members of the lower bench. Whereas judges of the higher court are appointed by the executive and their appointments are ratified by Parliament, members of lower courts are appointed by the Judicial Services Commission.
- The behaviour of adjudicators is kept in check by the Judicial Code of Conduct Act, 1999 (Act 13 of 1999) which created the Judicial Complaints Authority to oversee the conduct of adjudicators. The Authority is made up of a complaints committee of five persons to whom any member of the public can address a complaint against a judicial officer. The fact that the Act does not cover court officials such as the Chief Administrator and other senior professional and administrative staff is one of its major weaknesses. The complaints procedure is confidential and proceedings are held in camera, and review participants felt that this inhibited transparency.
- The funds of the judicature consist of such monies as may be allocated by Parliament and grants and payments in the form of court fees and fines. The

judicature has been funded substantially by donors both in terms of capital projects and various programmes. However, general funding remains problematic, particularly with regard to resources for managing the judicial process and paying support staff.

- Under the Judicature Administration Act, 1994 (Act 42 of 1994) the courts are administered separately from the Ministry of Legal Affairs and the Judicial Service Commission has the power to appoint the staff of the judicature. However, despite its new autonomy and improvement in the salaries of judges, the salaries of magistrates and court justices remain unsatisfactory. This has contributed to allegations of corruption by adjudicators, even at the highest level.
- The gender composition of the adjudicators is unsatisfactory. There are still considerably fewer female than male adjudicators.
- Most local court officers are drawn from a pool of retired civil servants who are poorly qualified for the position. This situation is exacerbated by their three-year contracts, which make impartiality problematic. Very few magistrates have trained as lawyers. The poor qualifications of persons manning the lower courts and the absence of lawyers at this level compromise the quality of justice dispensed to citizens who use these services.
- Juvenile justice is governed by the Juvenile Act, 1956 (Act 4 of 1956), as amended, but the definition of a child varies depending on the context and piece of legislation. The fragmented legal framework complicates the delivery of justice to juveniles, with numerous articles relating to children scattered among different statutes. In addition to constitutional and statutory legislation, customary law also regulates matters concerning children. In the same fragmented manner, the legislation on children is implemented through five different programmes while different ministries share the responsibility for the welfare of children – but not necessarily in a coordinated manner.
- The government has embarked on a law reform process to review various pieces of child-related legislation in order to harmonise them and bring them in line with the general principles of the United Nations Convention on the Rights of the Child. However, the process is slow and has on occasion stalled and there is still a lack of clarity regarding progress.
- Zambia has ratified the United Nations Convention on the Rights of the Child, although its provisions have not been domesticated.

- Children are not separated from adults whilst detained at police stations prior to court appearances, mostly because police stations do not have the necessary facilities. Detained juveniles experience the same hardships as adults. There is no special provision regulating the procedure to be followed when children are arrested, either.
- The subordinate court, which is manned by non-lawyers, can constitute itself into a juvenile court in order to try a juvenile offender. Pre-trial detention is discouraged for fear of contaminating juveniles. Corporal punishment was outlawed by the courts as inhuman and degrading punishment is discouraged, but there is no Act in place that prohibits corporal punishment in all settings and children are still subjected to humiliating and demeaning punishment.
- Some innovative measures have been introduced to improve the juvenile justice system, for example an arrest, reception and referral service for arrested children, a child friendly court, and a diversion programme.
- The majority of the respondents indicated that it was difficult to access justice with poverty and existing institutional arrangements being cited as the major barriers to access.
- Among the poor and women there is a very low awareness level of the availability of formal justice mechanisms. People - especially the poor - tend to feel comfortable with the dispute resolution mechanisms they are used to and prefer them to formal court procedures. It has the added advantage that people are rarely required to travel beyond their areas of residence.
- In general, court fees do not hinder access, but 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.
- The Legal Resources Foundation was singled out as an institution that has been effective in providing legal services free of charge to the poor. However, access to the services provided by paralegal personnel is limited because the few institutions that do provide paralegal services are restricted to a limited number of districts and provincial capitals.
- The small number of courts situated in the countryside is a limiting factor in accessing justice. Where these courts do exist their condition is often unsatisfactory.

- Delays in court proceedings discourage people from taking disputes to formal courts of law. The time it takes for cases to be heard and disposed of by the courts is of great concern, with adjournments at the insistence of legal practitioners or the courts being a major source of delay.
- On the whole, the remuneration packages and conditions of service of judges are adequate to ensure delivery of justice and dissuade them from succumbing to corruption.
- However, improved conditions have not been extended to the industrial relations court and the lower bench. Despite handling sensitive cases, magistrates remain vulnerable to dismissal as many of them are employed on contract. Their remuneration packages are minimal.
- Judges are not considered to be gender sensitive. Promotion of equality, particularly gender equality, was considered to be problematic in the rural areas because of the influence of gender-biased customary laws.
- Knowledge and use of international human rights instruments relevant to the administration of justice are poor, especially in the rural areas. Even judges did not display substantially greater knowledge than ordinary citizens of international instruments and the extent to which these had been incorporated into domestic criminal law and procedures.
- Despite random reforms to several laws, Zambia for the most part still uses old English laws, practices and procedures which have since been modernised in England.

Recommendations

- The government should strengthen and intensify projects already under way to implement human rights standards, guard the independence and impartiality of the judiciary, and improve infrastructure and conditions of service of adjudicators.
- Zambia should place an immediate moratorium on the use of the death penalty. This would also align Zambia with international and regional trends towards abolition of the death penalty.
- Governmental and non-governmental legal aid institutions require resources and support to improve access to justice by the poor. The many problems experienced by the Legal Aid Board are a clear indication of inadequate funding. Mechanisms should be developed to ensure that the Legal Aid

Board has a presence, especially in the rural districts. The training of paralegal personnel should be formalised and guidelines developed to ensure a professional standard of work. It is important that the board be separated from the Ministry of Justice. As an independent body, it would be able to effectively plan the expansion, hiring and retention of staff as well as mobilise resources from both the government and cooperating partners.

- The development and provision of infrastructure to host courts is a critical element in accessing justice. A holistic approach should be adopted to ensure that, where possible, recruitment and placement of judicial officers and the expansion of court space take place simultaneously.
- Some of the inordinate delays in disposing of cases are the result of the absence of effective case management techniques. The management of cases within the judiciary should be improved, for example by introducing electronic record-keeping to monitor court proceedings in the superior courts.
- It is essential to improve coordination and networking of agencies involved in the delivery of criminal justice and to strengthen partnerships between the government and NGOs. In this regard, the activities and infrastructure of the NLACW should be extended to rural areas and expanded urban areas as a critical step in increasing access to justice for poor and vulnerable women.
- Training programmes should be launched to improve the skills of personnel involved in the delivery of criminal justice in general and in gender, juveniles and human rights issues in particular.
- There should be an audit of the domestication of international and regional treaties and conventions and their ratification by the Zambian government. This should be followed by a programme to domesticate the treaties and conventions.
- Legislation relating to juvenile justice should be reviewed and modernised as a matter of urgency.

CUSTOMARY JUSTICE

Key findings

- Zambia's customary law is made up of the customary laws of each of Zambia's 73 ethnic groups, 42 of which are major groups. Since none of

these customary laws have ever been unified or codified in Zambia, there is no single common system governing all areas of the country. Different clusters of laws regulate the rights, liabilities and duties of various ethnic groupings in the country.

- The customary criminal justice system refers to the courts of chiefs and headmen. These structures of dispute settlement have existed since the pre-colonial period. However, the chiefs' courts are not integrated in the formal justice system and they operate parallel to the centrally administered judicial system. Further, the chiefs' courts have common jurisdiction with local courts in matters of customary law.
- Rulings made in traditional courts are not recognised as part of the judicial system and even the existence of such courts is not formally acknowledged. Officers serving in local courts are not chiefs and headmen and are not considered to have sufficient knowledge of customary law.
- Customary law and practice place women in a subordinate position to men with respect to property, inheritance and marriage, and are often applied despite various constitutional and legislative provisions on equality. Irrespective of whether the system is patrilineal or matrilineal, male domination is common among all ethnic groups and there is a clear preference for male heirs.
- Traditional courts administered by chiefs constitute viable systems of justice delivery but lack the support of the state machinery when enforcing their judgments. Customary law has provisions for punishment and remedies for transgressions.
- Customary courts have no physical infrastructure. Most proceedings take place under trees and are very informal. Customary criminal justice is considered to be part of the local governance system. It was found that even when there is a local court in an area, people prefer taking their cases to customary courts because:
 - Customary courts are considered to be more democratic because all parties state their cases without much bias (except with regard to gender and age)
 - The traditional system, though not written, is more familiar to most people than the statutory system
 - The customary criminal justice system is considered to be part of the traditional dispute resolution system, takes a short time to administer

justice, there are fewer adjournments, and the procedure is known to the public

- Administrators in local courts are considered to be unfamiliar with the customary justice system and are not the custodians of customary law
- The poor feel that they do not have equitable access to justice in local courts and prefer the traditional system
- Women in particular are inclined to use the traditional, customary system because they are familiar with the procedure. In contrast, local courts use processes and procedures closer to that of the formal law system
- The language of those involved in the case is used as opposed to English, which not many local people understand
- The system is based on restoration and reconciliation so that people are encouraged to forgive each other and live together peacefully once the case has been finalised, even if it concerned murder
- The system encourages mediation. This is appropriate to the needs of the poor and tends to restore community relations as opposed to the formal system, in which community concerns are secondary when dispensing justice
- The main disadvantages of the customary criminal justice system are the following:
 - Enforcement of decisions is a problem
 - The system does not receive any funding
 - Its legal status is ill defined
 - Proceedings and decisions are not recorded, making it difficult to monitor the substance of decisions or pinpoint inconsistencies
 - Gender-based discrimination is common since the system is based on traditional practices and norms which do not favour women, especially when a crime has been committed by a male
 - Although customary law does recognise some human rights, it does not recognise international treaties, protocols and conventions

Recommendations

- Customary law is based on oral traditions and as such is subject to misinterpretation. It is therefore recommended that the system be properly documented.

- The customary criminal justice system should be reformed by restoring the position of chiefs. The process requires greater awareness and sensitisation on the importance of the customary justice system, particularly by the government.
- Records should be kept of customary tribunal proceedings.
- Officials (headmen and chiefs) should receive training in basic human rights principles.
- At present there is no interaction between the customary criminal justice system and the formal system. The two systems should interact.

THE ZAMBIA PRISON SERVICE

The Prison Service currently faces challenges ranging from overcrowded prison accommodation, a shortage of manpower, and a lack of advanced training (especially in management development and human rights) to insufficient food, health facilities and transport for prisoners and in some cases, insufficient uniforms and unsecured prison buildings. Facilities for women and juveniles are also inadequate.

Key findings

- Zambia has 53 prisons, 10 medium security prisons, 3 remand prisons and 1 reformatory.
- The prisons are dangerously overcrowded. In 2007 they had a capacity of 4 000 but in the last half of the year held 14 894 inmates: 6 073 of these had been convicted and the rest were on remand. This means that almost 57 per cent of the prison population was on remand. The remandees are kept in overcrowded prisons and are held together with convicted criminals under inhumane conditions. The increased prison population has not been matched by physical extensions to the prison facilities. The congestion contributes to sodomy and homosexual practices in prisons.
- Despite a threefold increase in the prison population since independence in 1964, the staff complement has increased from 1 800 then to only 1 856 by mid-2007. This translates to a ratio of staff to prisoners of just over one staff member for just over three convicted prisoners (1:3,06) and one staff member for every eight prisoners if all inmates are included.

- The Prison Service budget has been inadequate for many years and many of the problems that it is experiencing is in fact a direct result of the lack of financial resources to support its operations.
- 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.
- 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 prisoners sleep while standing. Bedding in the form of mattresses and blankets are still 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.
- Apart from tuberculosis, HIV/AIDS and other sexually transmitted diseases are the most dangerous diseases faced by prisoners, a situation that is exacerbated by overcrowding. The major risk behaviours for HIV transmission identified in prisons include homosexual practices between male inmates, tattooing, sharing of needles during drug use, and sharing of shaving instruments.
- The Zambia Prison Service has an elaborate HIV/AIDS and STI/TB workplace policy whose main objective is to prevent transmission of these highly infectious diseases.
- Prison clinics lacked drugs and in some prisons there were no medical facilities to dispense medication or provide treatment.
- Delays by the criminal justice system in disposing of cases partly account for the overcrowding, with poor case flow management, work stoppages and strike actions being contributing factors. Some remandees are kept on expired warrants or without warrants.
- The Prison Service has historically had to contend with low funding levels from government. A lack of sufficient funds is the root cause of many problems that confront the Prison Service.
- Transport is often unavailable for prison activities such as collecting firewood and transferring remandees to court.
- Most prisons in Zambia were built for males and have no separate facilities for females. Pregnant female prisoners receive ante-natal and post-natal care and baby clothes and other necessities at government expense. In the case

of female prisoners with young children, the children are allowed to remain with their mothers in prison until they are four years old. Women constitute a very small proportion (about 3 per cent) of the total prison population.

- The appropriate detention of children in conflict with the law is provided for in a number of conventions. Zambia has ratified the United Nations Convention on the Rights of the Child, although its provisions have not been domesticated. The Permanent Human Rights Commission has reported incidences where juvenile prisoners have been kept in the same cells as adults. In many cases, the juvenile prisoners are ill-treated and indecently assaulted by older inmates.
- Beatings and cruel treatment of prisoners do occur but these are normally not reported to higher prison authorities, or where they are reported, no action is taken. There have been reports of abuse of prisoners such as prisoners being forced to dance to entertain the public. Prison officers have also used prisoners to work in their private gardens or perform other manual work at officers' homes.
- Most inmates have no problem gaining access to their lawyers and relatives, friends and well-wishers are usually allowed to visit inmates, generally on weekends. The inmates are also allowed to receive food or such necessities as soap or plates from relatives or visitors.
- There have been some recent improvements to the Prison Service:
 - The government has taken steps to procure uniforms for prisoners and staff
 - There has emerged a political will to resolve transport problems affecting the Prison Service, and cargo trucks, utility vans, buses, ambulances and speed boats have been procured. The funding for this and for other requirements such as irrigation systems were provided from outside the normal prisons budget
 - To lessen problems caused by congestion, attempts have been made in 2004 to shift the focus to the rehabilitation of prisoners and the establishment of open-air prisons. Illegal immigrants are also no longer imprisoned but receive special temporary permits. There are efforts to separate juveniles from adults and female suspects are placed on police bond where there are no facilities for detaining women.
- Zambia has ratified a number of conventions which establish international and regional human rights standards with regard to prisoners and also

signed non-binding international instruments that are intended to give prisoners full access to justice. However, Zambia has not domesticated the majority of these instruments and hence they cannot be used to give prisoners full access to justice.

Recommendations

- It is recommended that three prisons (one each for males, females and juveniles) be built to help resolve the problem of overcrowding in prisons. The new prisons should take into account the special needs of women and children.
- The President should be encouraged to continue using his powers under article 59 of the Constitution to pardon deserving prisoners as a way of decongesting prisons.
- Training in human rights law should be a priority. This will help to mitigate the abuse and harsh treatment of prisoners by warders.
- The government should increase financial and budgetary allocations to the Prison Service to make it possible to purchase required materials, recruit adequate manpower and carry out skills development activities.
- The Commissioner of Prisons should prioritise the appointment of a medical doctor and other medical officers to take care of the health of inmates and oversee the implementation of a health care programme in the Prison Service.
- A national parole board should be set up in accordance with section 113 A of the Prisons (Amendment) Act, 2004 (Act 16 of 2004) which should speed up recommendations for the release of deserving prisoners, especially those sentenced for minor offences. A parole system would help to decongest prisons.
- The judiciary should be encouraged to impose non-custodial sentences for petty and minor crimes to help decongest prisons.
- The Prisons High Command should be encouraged to set up a legal department to monitor the observance of human rights and implementation of the UN Minimum Standards and other conventions related to the treatment of prisoners. It should also oversee training in human rights by the relevant staff and monitor the movement of remandees to court and ensure that no one is detained without any warrant or with an expired warrant.
- The government should set up a prisons ombudsman to deal with human rights abuses in prisons. The prisons ombudsman would receive, hear,

investigate and pronounce on complaints by prisoners on their treatment and oversee the general welfare of prisoners.

- A comprehensive master plan strategy should be instituted for the Prison Service to ensure that problems are dealt with in a comprehensive manner.
- Zambia should be encouraged to ratify and domesticate the many treaties, protocols and conventions to which it is purportedly a party.

INTERNATIONAL CONVENTIONS AND PROTOCOLS

Key findings

- Zambia is an active member of the African Union and belongs to several other continental organisations. The country has signed and ratified many regional protocols and agreements dealing with crime, security and law enforcement.
- The regional protocols that Zambia has decided to ratify and implement are at various stages of processing. Of the 22 regional protocols that Zambia has signed in this category, only eight have been ratified, a situation that could be interpreted as a lack of commitment on the part of Zambia.
- There are also other important treaties and protocols dealing with crime, law enforcement and internal security that the country has neither signed nor ratified and from which it could benefit.
- Zambia is a member of the United Nations and the country also belongs to several international organisations and has signed several international conventions and protocols on security, crime and law enforcement.
- Zambia belongs to and participates in meetings of organisations fighting crime and dealing with security issues, narcotic drugs, psychotropic substances, human rights violations and corruption.
- The country's capacity and efficiency in processing regional and international protocols are limited.

Recommendations

- Zambia needs to make a concerted effort to ratify all the regional and international treaties and protocols it signed and to domesticate them into national law.

- The country needs to strengthen its capacity to process important protocols and conventions timeously and to domesticate the ratified treaties. While the positive impact of ratifying these instruments cannot be questioned, domestication is a critical step in its application. Until the instruments are domesticated, the country will be unable to prescribe and impose penalties to offenders as the instruments are not yet part of the laws of the land.

CONCLUSION

From the findings of this review it is clear that Zambia needs to undertake major reforms in all its criminal justice institutions and the regime as a whole to enhance efficiency and effectiveness in the delivery of justice to its citizens. An important finding was the preference for customary justice by the majority of the citizens. Although this points to a deficit in the provision of modern justice institutions, it equally points to the need to harmonise customary justice mechanisms with the formal justice system.

1 Introduction

AFRICAN HUMAN SECURITY INITIATIVE

The African Human Security Initiative (AHSI) is a consortium of organisations that has taken the initiative to emphasise human security in Africa. The partners are the Southern Africa Human Rights Trust, West African Network for Peace-building, African Security Dialogue and Research, African Peace Forum, University for Peace Africa Programme, South African Institute for International Affairs, Institute for Human Rights and Development in Africa, and Institute for Security Studies.

AHSI has used the opportunity created by the peer review concept to complement the African Peer Review Mechanism (APRM) process of the formal New Partnership for Africa's Development (NEPAD) to undertake an intensive review of the criminal justice system in countries identified for the APRM.¹ Through this process, AHSI seeks:

- To complement the work of the Africa Peer Review Mechanism
- To provide governments with empirical evidence on the status of criminal justice and its impact on political processes in their countries. This involves

Map 1 Zambia



working with them to develop a set of realistic and informed recommendations for each area to help bridge gaps between national commitment and implementation

- To identify the structural and other inherent weaknesses in criminal justice systems and encourage policy dialogue and public awareness of the broader implications of crime on the consolidation of democracy
- To support the development of and build capacity amongst a core network of partners in an area where civil society organisations are traditionally the weakest in Africa, namely content work on crime and justice matters

In terms of the programme five countries, namely Zambia, Tanzania, Benin, Mali and Sierra Leone, were selected for review in 2007/08.

METHODOLOGY

The aim of the review was to assess the efficiency and effectiveness of the criminal justice system in Zambia. The study was undertaken in a number of stages:

- Individual questionnaires and action plans were prepared, based on a master questionnaire provided by the AHSI secretariat
- A country workshop was held to allow the researchers to meet one another, review methodologies, and plan possible collaboration in the field
- Preliminary reports on data collection were prepared for discussion and review

A methodology preparation workshop on reviewing crime and criminal justice in Zambia was held in Lusaka and attended by the local researchers and resource persons. The methodology that would be used in data collection by the researchers was discussed and refined. Research teams adapted both the qualitative and quantitative research designs to their own needs.

A combination of data collection techniques was used, including desktop studies, interviews, observation, written questionnaires, and case studies. The input of key respondents and members of the public was central across all the themes. Face-to-face interviews as well as focus group discussions were conducted throughout the country. Appropriate semi-structured questionnaires were used to collect data from representatives of public institutions, resident

development committees (RDCs), non-governmental organisations (NGOs) and other key participants.

In addition, based on the specific theme or area within the criminal justice system, a purposive sample of representatives from the agencies and/or NGOs whose activities relate to public accountability and transparency and the respect for human rights was used for the reviews. In total, 1 000 respondents from government organisations, RDCs, the general public, NGOs, UN agencies and the legal profession participated in the reviews. However, because a purposive rather than a random sample was used, the findings cannot be regarded as nationally representative of the criminal justice system in Zambia. Statistics and figures in particular must be interpreted cautiously. Nevertheless, although the findings are based on the responses of a specific group, they do provide a fairly good insight into the situation in the country.

The study included several follow-up field visits to address issues needing clarification. Apart from physical follow-ups, participants were contacted by letter, telephone and e-mail to improve the response rate and increase accuracy. The fieldwork took about four months (June–September 2007).

Some clear challenges emerged during data collection. These are explained below.

Crime and prosecution

With regard to crime, the inquiry focused on the following areas:

- Levels, prevalence and perceptions of crime
- Measures to combat crime
- The current crime situation
- The role of the media in bringing crime to light
- Drug trafficking and combating drug trafficking
- Illegal migrants
- The protection of minority rights
- Money laundering

With regard to the office of the Director of Public Prosecutions (DPP), the focus was on the following areas:

- The role of the DPP

- Public knowledge and perceptions of the role of the DDP
- Linkages with other law enforcement agencies
- Regional cooperation and constraints facing the office of the DPP

The Director of Public Prosecutions is instrumental in ensuring transparency and accountability of government with regard to the investigation and prosecution of various offences, especially those relating to corruption. In this respect, therefore, heads of appropriate law enforcement agencies or their representatives were purposively selected for inclusion as participants in the review.

Research design and data collection

Semi-structured research instruments were used to collect data from representatives of public institutions, RDCs and NGOs in focus group discussions, as well as other key participants. In order to complement the qualitative data, a total of 100 participants answered a structured questionnaire focusing on key aspects of the review. Secondary data was collected through desk research in the form of reports, newspaper articles and other relevant documentation.

Data was collected from four provinces, namely Lusaka in Lusaka Province, Solwezi in North-Western Province, Chibuluma in Copperbelt Province and Mansa in Luapula Province.

Selection of review participants

Crime in Zambia, like in many other countries, manifests itself in several ways. Consequently an array of institutions has been created to deal with the different aspects of crime, including some that specialise in investigations and prosecutions. For this reason heads of relevant law enforcement agencies or their representatives were purposively selected for inclusion as participants in the review.

The 100 respondents who answered the structured questionnaire were systematically selected from the provinces that were visited. Only parents or persons aged 18 years and older in the selected households were eligible to answer the questionnaire. Another household was chosen in situations where no-one aged 18 years or older was available at the time of the interview.

Representatives of civil society organisations, whose activities are directly and variously related to the promotion of good governance, particularly with regard to public accountability and transparency and respect for human rights, were also included in the review.

RDCs assisted in the organisation of focus group discussions in the communities that were visited. Some RDC members were also interviewed personally.

Sample size

A total of 236 respondents participated in focus group discussions. They were constituted as follows:

- 29 government representatives
- 38 RDC members
- 65 focus group participants
- 100 community members (structured questionnaire)
- 4 civil society representatives

Data analysis

The Statistical Package of the Social Sciences (SPSS version 13) was used to analyse the data of the questionnaires. The narrative approach was adopted for the analysis of qualitative data with the intention to recite facts as told ‘in the first person’.²

Challenges in researching crime

It was difficult to gain access to crime statistics in the country, as the police do not release the figures to the public or to researchers. Requests for permission to speak to senior officials who could provide statistical evidence were largely ignored. Some statistical evidence on the incidence and prevalence of crime in the country were found for Lusaka in the United Nations Office on Drugs and Crime (UNODC) 2003 urban survey and the Afrobarometer 2005 public opinion surveys. This gap could only be partially closed by conducting crime victimisation surveys which gave some indication of how widespread crime is. A further problem is that crime statistics do not tell the true story, as the police tend to leave out some aspects when they record crimes. This is largely due to the way that crimes are defined and interpreted by law enforcement agencies.

Law enforcement

A review of law enforcement required a description of the structure and key functions of selected public law enforcement institutions, an assessment of the

public's perceptions of these institutions, and an evaluation of the domestication of certain international/continental conventions/protocols dealing with crime and law enforcement.

The study involved administering 100 structured questionnaires in six districts (Lusaka, Chongwe, Kabwe, Kitwe, Chipata and Katete) and conducting focus group discussions with members of the general public, private lawyers, NGOs and members of staff from selected law enforcement agencies. While some discussions were held in a structured format, others were carried out in an informal, conversational manner.

Challenges

Limited research is available on the subject of crime in Zambia and for a considerable time no significant works have been published on the subject. Existing documented information was accordingly derived from UN agencies and NGOs, while the quantitative data was generated during fieldwork, with the cooperation of some Zambian state departments, NGOs or UN agencies. In many of the relevant government departments, record-keeping leaves much to be desired as far as standards and consistency are concerned. Furthermore, it was often difficult to obtain information even where records did exist. For example, a senior officer in the Ministry of Foreign Affairs neglected to provide information about the protocols and treaties Zambia has signed and ratified, despite written instructions to do so from the permanent secretary in his own ministry. In addition, there is no electronic or other database in which information is recorded on a continuous basis and that can be verified against a paper trail.

This consultant had to wait for two months before approval was given by the Inspector General of Police to conduct interviews with Zambia Police Service members, despite following government procedures and submitting written introductory letters from the ISS and the Permanent Secretary (Home Affairs). Consequently, data from the Zambia Police Service was collected in haste to meet the report deadline. Data on the Zambia Prison Service was collected from indirect sources after the Commissioner of Prisons refused to allow access to officers and prisoners.

Owing to time limitations and the unavailability of certain individuals, telephonic interviews had to be substituted for face-to-face interviews.

The judiciary

The judiciary was investigated primarily to examine its independence and impartiality and to determine to what extent the Zambian judiciary is capable of administering the law without fear or favour. Data was collected mainly through two methods: fieldwork and a document review.

Fieldwork was confined to interviews with key participants and focus group discussions. Two rural sites in two different provinces, namely Petauke in Eastern Province and Monze in Southern Province, and one urban site, Lusaka in Lusaka Province, were selected for the study. Lusaka was chosen because it houses the judiciary administration, the Supreme Court, and the majority of lower courts, judges and magistrates.

From the beginning it was clear that owing to distant locations and limited resources, the study would not be able to use a representative sample but would have to target specific individuals. Originally it was hoped that it would be possible to target an equal number of individuals at each of the three sites, but because of various constraints fewer respondents were interviewed in Petauke and a different approach (group discussion) was used in the other rural site, Monze.

Studies that addressed the structure and function of the judiciary were useful in providing verification and background to the field data. The document review was intended to identify research gaps pertinent to the study and support and strengthen the data derived from the fieldwork. Because the document review preceded the fieldwork, it enabled the researchers to focus on specific aspects of the criminal justice system during fieldwork. The document review was partly anecdotal and included extracts from court judgments, statutory provisions, official statistics and two nationwide research reports of the Zambia Law Development Commission and Women and Law in Southern Africa (WLSA) Research Trust.

A list of questions was put to groups of respondents at all three sites. The interviewees were drawn from court users (legal practitioners, ordinary citizens and litigants), court administrators and adjudicators, and non-governmental organisations (NGOs). Members of Parliament (MPs) were interviewed after the other interviews had been completed to give parliamentarians an opportunity to respond to the sentiments expressed by legal practitioners, court users and NGOs.

The interviews were also used to verify some of the issues identified from the literature:

- The purpose of some questions was to extract information on the security of tenure of judges and other adjudicators from the perspective of appointment procedures, remuneration and tenure of office once appointed
- There were questions on the sources of pressure experienced by adjudicators at different levels to rule in a particular way
- Some questions dealt with indirect forms of pressure, such as public criticism of court decisions and personal insecurity resulting from criminal activities deemed to be threatening to adjudicators
- Other questions sought to establish respondents' knowledge of domestic criminal law and procedures and international human rights standards, as well as the extent to which adjudicators were seen to comply with the rule of law

Challenges

Limited field data obtained from only three sites in a country as large as Zambia had to be offset by a comprehensive review of literature derived from more comprehensive studies undertaken in the recent past. Thus a substantial proportion of the 'data' was derived from statutory provisions and secondary sources.

Prisons

The research was confined to matters affecting the Zambia Prison Service, with an emphasis on the treatment and general welfare of prisoners. A further matter of interest was the treatment of special and vulnerable groups such as women and children (juveniles).

The study was confined to prisons in Lusaka, Mukobeko, Kitwe, Kamfinsa and Livingstone. Public opinion on prison conditions was also solicited.

Desk research

The study started with a review of documents pertaining to the legal framework and an examination of institutional reports and other documents from relevant and appropriate stakeholders such as the Catholic Commission for Justice and Peace, Young Women's Christian Association (YWCA), Zambian

Human Rights Commission and Zambian government. Statistics from the Central Statistical Office and media reports were also examined. International and regional instruments applicable to the prison service were also identified.

Interviews

Information was collected through face-to-face, open-ended, structured interviews with the following target groups (individuals and focus groups):

- Human Rights Commission
- Catholic Commission for Justice and Peace
- Law Association of Zambia (Human Rights Committee)
- Young Women's Christian Association
- Legal Resources Foundation
- Officials at prison headquarters (access to prisoners was denied)
- Ministry of Justice
- Ministry of Home Affairs
- Zambia Prison Fellowship
- Members of the public
- International Organisation for Migration (IOM)
- Prison Care and Counselling Association

Challenges

Security institutions in the country do not easily allow public scrutiny. For instance, authority to obtain data from targeted prisons was not granted until 17 September 2007, five days before the deadline for submission of the final report, although permission was sought in May 2007. Furthermore, the Commissioner of Prisons refused to allow prison officers or prisoners to be interviewed or answer questionnaires.

Access to justice

Access to justice is mainly focused on the creation of an efficient, effective legal system. The study thus revolved around the problems of ordinary citizens in accessing the judicial system. It became clear that there are poor institutional linkages and coordination among the institutions and other stakeholders involved in the administration of criminal justice in the country.

Customary justice

This section of the study sought to assess the role of the customary criminal justice system in Zambia. The emphasis was on the role of non-state dispute resolution systems – those that are based on customary, traditional or tribal systems of justice - in fostering the rule of law in Zambian society.

The study set out by reviewing documents such as policy documents, guidelines and manuals, including a review of documentation on how the customary criminal justice system is conceptualised; the forms it takes; access to and control of the system by women and men respectively; and distinctions between matrilineal and patrilineal systems.

Interviews, on-site visits, questionnaires, observations and focus group discussions are some of the approaches used to collect data in Western and Southern provinces. The locations visited included both rural and urban settings and targeted customary justice administrators at local and national level as well as the public, representatives of faith-based institutions, grassroots organisations, NGOs dealing with the customary criminal justice system, the relevant government departments (archives), local court justices, chiefs, headmen and headwomen, the House of Chiefs, teachers, *indunas* (traditional leaders), traditional educators, and traditional courts.

While the literature review covered the whole country, the field study was limited to two provinces. It was felt that the areas and interest groups that had to be covered in the review were too ambitious and that a follow-up study should be undertaken to elicit the views of the different ethnic groups. Nevertheless, the intention of the report was to draw lessons from customary criminal justice practices in order to provide useful insights for policy reformulation and enhance security delivery in Zambia.

Discussions of the findings from the focus group helped to streamline views and deal with contradictions stemming from the interviews.

Challenges

In view of the variation in customs across the more than 42 ethnic groups, data should ideally have been collected from all the groups. However, collating and reconciling the different customs would have been a mammoth task and was beyond the capacity, logistical resources and time constraints of the researchers.

It would be worthwhile to conduct an in-depth study to find common ground among the customs of the different groups.

STRUCTURE OF THE REPORT

The report has eight chapters. The introduction (chapter 1) and a brief discussion of crime in Zambia (chapter 2) is followed by a discussion of the institutions of the criminal justice system, namely policing (chapter 3), the prosecutorial services (chapter 4), the courts (chapter 5), customary justice (chapter 6) and prisons (chapter 7). The final chapter (chapter 8) addresses Zambia's ratification of international, continental and regional instruments.

Each of the chapters presents the legal framework, assesses the capacity of the institution to deliver on its mandate, and gives civilian perceptions of the service it provides. The chapters all conclude with a set of recommendations.

OVERVIEW OF ZAMBIA

Zambia is a former protectorate of Great Britain and has retained the English common law system in its adjudication of crime. Because of its colonial legacy, Zambia has a dual legal system made up of general law (the Constitution, statutes, case precedents, subsidiary legislation and English common law, principles of equity, and selected statutes) and customary law.

The dual system applies to a limited extent to criminal cases. The result is that although the majority of offences are covered by statutory law, some minor offences may be handled under customary law. In some cases customary law may also be applied to a serious criminal offence simply because the parties involved do not report the offence to the police, preferring instead that the chief or another community leader resolve the matter.

The applicable general law is mainly found in the Penal Code and the Criminal Procedure Code, but also in the penal sections of other pieces of substantive legislation. The features of the general law system are the adversarial litigation process and involvement of lawyers in the prosecution and defence of accused persons. Equality before the law and the right to fair trial are guaranteed in the constitution. The common law system is also viewed as the general law system, conceptually superior to the parallel traditional customary law system – it is nevertheless the latter with its own concepts

of crime and punishment that is known and understood by the majority of the population.

There are three arms of government: Parliament (legislative), the executive (presidency) and the judiciary headed by the Chief Justice. Under the Chief Justice are the Supreme, High and Magistrates' Courts. The Constitution, which was amended in 1996, is again being reviewed, but the process has not yet been completed. It is expected to outline changes in governance, legal and judicial issues.

The President, who is also commander-in-chief of the armed forces, leads the Republic. He appoints all members of his Cabinet, including the Vice-President. However, all appointees must be MPs.

The legislative body of the country is the National Assembly. It is a unicameral body with 150 elected members and eight nominated members. The Speaker of the National Assembly is the head of the legislature and is elected by MPs.

The criminal justice system in Zambia comprises several institutions, including the judiciary, the Zambia Police Service, the Director of Public Prosecutions, the Legal Aid Board and the Zambia Prison Service. A number of NGOs are also involved in the provision of legal services, especially to the poor.

The protection of fundamental rights of citizens and residents is the cornerstone of the current Constitution of Zambia. The basis of fundamental rights is laid out in Part III of the Constitution, which recognises and declares that every person is entitled to the fundamental rights and freedoms of the individual (article 11). The same article safeguards the rights of individuals - regardless of their race, place of origin, political opinion, colour, creed, sex or marital status - to all of the following:

- Life, liberty, security of the person, and the protection of the law
- Freedom of conscience, expression, assembly, movement and association
- Protection of young persons from exploitation
- Protection for the privacy of their names and other property and protection from deprivation of property without compensation

The Constitution guarantees the protection of the law and treatment in accordance with the law, by providing that every person charged with a criminal offence shall:

- Be presumed to be innocent until he (or she) is proved guilty or has pleaded guilty
- Be informed, as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence with which he is charged
- Be given adequate time and facilities for the preparation of his defence
- Unless legal aid is granted to him in accordance with the law enacted by Parliament for such purpose, be permitted to defend himself before the court in person at his own expense, by a legal representative of his own choice
- Be afforded facilities to examine in person or by his legal representative the witness called by the prosecution before the court to obtain the attendance and carry out the examination on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution
- Be permitted to have, without payment, the assistance of an interpreter if he is unable to understand the language used in court

Constitutional developments in Zambia

Since attaining independence in October 1964, Zambia has undergone four major phases in its constitutional development.

The first came with political independence itself. Following successful negotiations for independence in May 1964, the British Parliament passed an order which set forth the Constitution of Zambia. The document detailed the government structure and the Constitution bore the imprint of the Westminster model of a representative parliamentary government. However, the tripartite structure – executive, legislature and judiciary – was closer to the Washington system than the Westminster system. The powers of the colonial governor largely passed intact to the executive president. The 1964 independence constitution was a flexible document providing for amendment by processes similar to the enactment of ordinary legislation. This laid it open to future changes that were so frequent and drastic that it undermined constitutional stability.³

Thus, in 1972 the government decided to turn Zambia into a one-party state, purportedly because it was in the interests of unity and economic development. However, the background to the decision strongly suggests that it was in reality a response to the mounting divisions within the ruling party, which were perceived as threatening its hold on power. A constitution commission was appointed to recommend the form and details of the single-party system. The

Chona Commission, named after its chairperson, Maiza Chona, the then Vice-President, travelled widely throughout Zambia, holding hearings and hearing evidence on the framework and features people desired in the operation of a one-party state government. The ensuing report informed the character of the one-party state constitution and the Second Republic came into being on 25 August 1973. The one-party state constitution was enacted by the National Assembly and assented to by the President⁴ and the independence constitution was repealed.

The years of the Second Republic were difficult for Zambia.⁵ Throughout the period 1973-1991 the economy of the country continued to deteriorate. As the 1980s drew to a close, demands for an end to the one-party state became more insistent. Pro-democracy groups, initially spurred on by the trade union movement, formed the Movement for Multiparty Democracy (MMD).

The demise of communism in Eastern Europe provided a catalyst for change. At first the government resisted the idea, but then announced a referendum on whether to continue the one-party state system. However, in September 1990 the government changed its mind and instead appointed a second constitutional commission, the Mvunga Commission, named after its chairperson, Professor M P Mvunga, who was Solicitor General at the time. The Mvunga Commission led to the reformulation of the 1973 Constitution in order to facilitate the re-introduction of multiparty politics.⁶

The 1991 Constitution was enacted on 2 August 1991 and approved by the President on 29 August 1991. This constitution was a transitional instrument to facilitate the return to multiparty politics and as such, a product of compromise. In the 1991 elections, the MMD promised that it would replace the 1991 Constitution if elected to power.

On 22 November 1993, for the third time since independence and for the second within three years, the government appointed a constitutional review commission headed by a prominent citizen, John Mwanakatwe. The Mwanakatwe Constitution Review Commission made a number of far-reaching recommendations, notably on the strengthening of the Bill of Rights and the inclusion of a range of new rights. For instance, it proposed strengthening the protection of the rights of women and prohibiting laws, customary practices and stereotypes that undermined the dignity and rights of women. The commission also recommended comprehensive provisions on children's rights and the adoption of the Constitution through a constituent assembly.

The government rejected most of the recommendations of the Mwanakatwe Commission.⁷ Among these were the introduction of several new personal rights, the introduction of a constitutional court, the recommendations on rights of women, and a recommendation on the establishment of an independent electoral commission. The most telling of the government responses to the Mwanakatwe Report was the rejection of the recommendation on a broad-based constituent assembly to ratify the proposed constitutional changes.⁸ Despite widespread criticism the government proceeded to amend the 1991 Constitution substantially through the enactment of the Constitution of Zambia (Amendment) Act, 1996 (Act 18 of 1996).⁹ With the exception of Part III, which governs protection of fundamental rights and freedoms of the individual, the whole 1991 Constitution was repealed and replaced.

On 17 April 2003 President Levy Mwanawasa announced the appointment of a fourth constitution review commission, headed by Willa Mungomba, a lawyer. The commission completed its work in December 2005. The Mungomba Commission report and draft constitution is divided into specific thematic chapters which highlight a number of pertinent issues that are intended to advance the agenda for development of the country. With regard to the rights of women and children, the draft constitution, among others, categorically states that there is a need to enshrine the principle of gender equality, as well as the provisions of the United Nations Convention on the Rights of the Child, in the Bill of Rights.

CRIMINAL JUSTICE STANDARDS

Access to justice

Access to justice in general rests on three foundations: substantive law, legal institutions and legal services.¹⁰ Substantive law must advance appropriate norms that promote productivity, efficiency and social justice. If they do not, then improving access to the legal system cannot be considered to be the equivalent of improving access to justice. Second, the institutions that develop, apply and enforce the law – mainly, but not exclusively, the courts – must be competent, impartial, efficient and effective. Access to an unjust legal system is not the equivalent of access to legal justice. Third, potential users of the legal system must be able to rely on an efficient and equitable system for producing and allocating legal services.¹¹

The first two cornerstones emphasise the element of ‘access’. In relation to the third cornerstone it is important to note that most people cannot access the legal system effectively without the assistance of specialist legal service providers.¹²

These three aspects of access to legal justice are interdependent. For example, legal and judicial institutions not only administer the law but help shape and create the law (even if this law-creation process is sometimes characterised incorrectly as ‘applying’ or ‘discovering’ the law).¹³

Human rights

In order to apply the human rights-based approach to development it is important to take as its starting point the legal framework within which human rights are protected in Zambia. This legal framework consists of both domestic and international standards. It has a dual character, meaning that the international human rights standards embraced by Zambia are not automatically executed at the domestic level.¹⁴ As part of the legal order, they require actual domestication unless they already apply in terms of other national laws. The human rights legal framework is composed of the following instruments:

- Universal instruments that include the six main UN human rights conventions and seven International Labour Organisation fundamental rights and freedoms
- Regional instruments adopted by the AU, namely the African Charter on Human and Peoples’ Rights and the African Charter on the Rights and Welfare of the Child
- National instruments, one of which is the 1996 Constitution of the Republic. Zambia has a dual legal system in which both statutory and customary law apply

Part III of the Constitution of Zambia of 1996 provides for the protection of the fundamental rights and freedoms of all Zambians. This part of the Constitution is often referred to as the Bill of Rights and contains civil and political rights in terms similar to those of the International Covenant on Civil and Political Rights. Article 11 of the Constitution states that ‘every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual ... whatever his race, place of origin, political opinions, colour,

creed, sex or marital status'. Article 28 of the Constitution provides for the enforcement of the protective provisions under Part III.

The Constitution further provides for protection of the right to life and the right to personal liberty, protection from slavery and forced labour, inhuman treatment, deprivation of property, and protection for privacy of the home and other property. It also contains provisions to secure protection of law, protection of conscience, freedom of expression, freedom of assembly and association, and freedom of movement.

Part IX of the Constitution contains some economic, social and cultural rights in the form of 'directive principles of state policy', as well as civil duties. Part XII creates an autonomous Human Rights Commission whose functions and powers are elaborated upon in the Human Rights Commission Act, 1996 (Act 39 of 1996). This is a response to one of the recommendations of the World Conference on Human Rights, namely that each state should consider the desirability of drawing up a national action plan identifying steps whereby that state could improve the promotion and protection of human rights. However, reports emanating from the Human Rights Commission indicate that violations of human rights occur frequently, especially in detention centres and prisons. More needs to be done to ensure that rights are protected, other than introducing human rights into the curriculum of law enforcement agencies.

It was against this background that the criminal justice system in Zambia was reviewed.

2 Crime in Zambia

INCIDENCE, NATURE AND EXTENT OF CRIME

As was indicated in the methodology section in chapter 1, it was very difficult to gain access to police statistics on crime as this information is not released to the public. For example, table 1 contains the overall statistics on offences that were reported and dealt with by the police in 2005, but while the statistics are broken down by province, the nature of the crime is not given. This information is essential for devising measures to combat the crime.

But even from these figures the skewed nature of the justice system is clear. Citizens in the three provinces where there are more economic activity and better infrastructure are more likely to report crime than those in other provinces. Copperbelt Province, where mining activities are concentrated, has the highest number of reported cases, but only 47,44 per cent were taken to court and there were even fewer convictions (38,01 per cent). In the remote province of Luapula, the number of reported crimes is very low and just under 10 per cent of the cases taken to court resulted in convictions. The deduction can be made that there are either few facilities where victims obtain police assistance or that trust in the formal criminal justice system is low and hence the public resort

Table 1 Offences reported and dealt with by the police

Division	Reported	Taken to court		Offences resulting in convictions	
		Number	Percentage	Number	Percentage
Lusaka	22 683	8 811	38,84	7 170	31,61
Copperbelt	41 553	19 714	47,44	15 794	38,01
Southern	12 032	2 729	22,6	1 566	13,01
Eastern	4 299	2 232	51,9	1 497	34,82
Central	6 786	1 922	28,32	1 395	20,56
Western	4 513	2 487	55,10	1 085	24,04
North-Western	3 406	1 258	36,93	1 109	32,56
Luapula	1 751	?	?	171	9,77
Northern	3 595	652	18,14	532	14,80

Source Republic of Zambia, Zambia Police Service, *Annual report on crime statistics*, 2005

to customary justice structures where proceedings are not documented. Only in two provinces - Eastern and Western - more than 50 per cent of reported cases were taken to court, but then just over a third (34,82 per cent) resulted in convictions in Eastern Province and only about one in four (24,04 per cent) resulted in convictions in Western Province.

Likewise, information on drug-related crimes is difficult to access. However, the Drug Enforcement Commission (DEC) reported that it had dealt with a total of 1 677 drug-related offences from January 2006 to May 2007. Of these 1 627 resulted in successful convictions while the remaining 50 led to acquittals.

VICTIM SURVEYS

An indicator of crimes in the country could be gleaned from a national survey conducted by Afrobarometer in 2005. Almost six in ten (59 per cent) of the respondents reported that they feared that a crime would be committed against them. Forty-six per cent of the respondents reported that something had been stolen from their or their family's home at least once. Although scanty, these data point to high levels of victimisation and the possibility of significant

Table 2 Description of the level of crime in Zambia by location*

Area	Very high	High	Low/very low
Lusaka	57,5	37,5	5
Mansa	30	45	25
Chibuluma	20	40	40
Solwezi	35	40	25
Total	40	40	20

*N = 100. Data cannot be extrapolated to the rest of the country.

under-reporting of crime. According to the Ninth United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems (2003–2004) the murder rate in Zambia was 7,1 per 100 000 in 2003/04 and it was ranked 17th in the world. This placed it below its neighbours, with Zimbabwe experiencing 8,1 murders per 100 000 and South Africa 49,6 per 100 000. The murder rate is usually used to assess crime, although it is dependent on the reliability of the reported data. About 100 000 offences were recorded in Zambia in 2005.

In an attempt to solicit perceptions on crime rates, a survey of 100 participants was conducted on the level of crime in Zambia by means of a structured questionnaire.¹⁵ According to this survey, which was conducted in four towns, 40 per cent of those interviewed described the level of crime in Zambia as ‘very high’ while another 40 per cent described it as ‘high’. In total 95 per cent of the Lusaka participants perceived crime levels in Zambia to be very high or high, followed by respondents in Mansa and Solwezi, with 75 per cent (see table 2). It would thus seem that an overwhelming majority of these participants consider crime in Zambia to be a serious problem that government should address.

Discussions with focus groups and other participants confirmed these perceptions and experiences. In Mansa there were widespread perceptions that house break-ins were more prevalent during the rainy season and that the perpetrators were mainly outsiders from towns in the Copperbelt who would arrive in the afternoon, steal in the night and go back the following morning before the crimes were detected. Respondents in Solwezi felt crime is on the increase as a result of the recent ‘economic boom’ following the opening of the Kasanshi Mine. In Chibuluma, a relatively small community in Kalulush district in the

Copperbelt, perceptions were that crime is low, but residents are not unaware of what is happening elsewhere, whether within their province or the whole country. As one of the residents in the focus group discussions pointed out:

Chibuluma is a small and old settlement. Most people know each other and many of us are not rich. We do not have property that would attract many criminals to the area. As a community I can say we are safe compared to our friends living in big towns within the province. There is no doubt that crime in our country is on the increase. From newspaper reports and news on the radio, it is clear that many people in the country are living in fear of criminals. Once in a while we have house break-ins and some property, mainly electrical goods, are stolen. We also have people assaulting each other for various reasons but generally we are better off than most places in the province or even maybe in the country.

During the focus group discussions residents of the Ng'ombe and Kalingalinga compounds in Lusaka expressed the opinion that development is likely to be adversely affected by the rate of criminal activities in the country, especially in towns and cities.

CORRUPTION

Levels of corruption

The Anti-Corruption Commission Act, 1996 (Act 46 of 1996) of Zambia defines corruption in section 3 as 'the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for private advantage or benefit'.

According to the 2001 Corruption Perception Index (CPI), Zambia was ranked the ninth most corrupt country out of the 90 countries surveyed, 11th out of the 102 countries surveyed in 2002 and again 11th out of the 133 countries surveyed in 2003. It dropped to ninth position, along with ten other countries, out of the 163 countries surveyed in 2006. 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.¹⁶

The Transparency International National Integrity Systems Country Study Report of 2003 analysed the strengths and weaknesses in Zambia's governance system, including the executive, the legislature and the judiciary. It provided a devastating analysis of how a government can loot its treasury, corrupt key agencies, distort privatisation and banking processes, and use the resources of the state to fund its dominance in an election process and pay for its retention of power. The report stated that the Anti-Corruption Commission (ACC) is both under-resourced and under-skilled, that MPs lack the capacity to discharge their functions effectively, and that the offices of Auditor General and Ombudsman are effectively moribund. This is attributed to a policy of deliberate under-funding and failure to punish those exposed as being corrupt. In particular, the report called for improvements to the legal infrastructure, including protection of whistleblowers, monitoring mechanisms for gifts to ministers and public officials, strengthening of conflict of interest rules, and an enforceable code of conduct for public officials.

Eight in ten households and public officials interviewed for the National Governance Baseline Survey (2004) rated corruption in the public sector as a very serious challenge to the country with almost seven in ten managers (67 per cent) rating it as the most burdensome obstacle to business development. The survey noted that almost 40 per cent of the respondents reported that they have been asked for a bribe to obtain a public service, licences or permits. According to the survey, the police, the National Registration Office, the courts and the Lands Department are agencies where unofficial payments are solicited most frequently. Generally, public institutions are considered to be only moderately honest. The organisations rated the most honest are the Ministries of Health and Education, the Postal Services, and church and religious organisations.¹⁷

A Transparency International-Zambia (TI-Z) 2005 Bribe Payers Index carried out in February 2006 in nine districts of the Copperbelt, Lusaka and Southern provinces found that as many as 20 per cent of the respondents confessed to having paid bribes – an increase on the 16 per cent reported in the 2004 Local Corruption Perception Index Report. The 2006 report noted that

the level of bribery in the country is much more widespread than this figure would indicate, because a good proportion of respondents who did not pay bribes refused only because they did not have the money to do so. Most of them also knew of someone who had paid a bribe.¹⁸

The sentiments and perceptions of the participants of the AHSI2 review confirmed these findings. On average, almost seven in ten respondents (68 per cent) who participated in the structured interviews rated corruption in Zambia as 'very high' with more Lusaka participants (77,5 per cent) describing it in this manner, followed by those from Mansa (70 per cent), Solwezi (65 per cent) and Chibuluma (50 per cent).

Corruption is viewed by 98 of the 100 participants as a serious problem that should be addressed by government. All the respondents in Lusaka, Mansa and Solwezi agreed with this, as did 90 per cent from Chibuluma. It was also reported by seven in ten respondents that the Anti-Corruption Commission is not doing enough to curb corruption in the country. Lusaka respondents (75 per cent) were more emphatic on this observation followed by those from Mansa and Solwezi, both at 70 per cent, with their Chibuluma counterparts at 60 per cent.

Focus group discussions as well as the views and perceptions of key participants revealed that a culture of tolerance of corruption permeates Zambian society. It was noted that corruption was rife in the electoral process and in public service delivery, as well as in the private sector. Corruption in the electoral process and public service delivery seems to be one of the citizens' greatest concerns. The general view was that democracy and good governance should be anchored upon a legitimate representative government that has been duly elected to office through a free, fair and transparent electoral process. Such a government has the potential to ensure a public service characterised by integrity and one that can be relied upon to deliver quality services in a transparent and accountable manner. The sentiments quoted below are typical of the views of most participants in the review on corruption.

The views of a Lusaka focus group participant were as follows:

Corruption is everywhere. It is very sad that this problem is being treated as a way of life in our country. Most public officials behave as if they are doing you a favour when you want a public service. They seem so aloof and disinterested. For most of them it seems as if being bribed is what rejuvenates their willingness to perform. It is a shame but that's

the situation on the ground. How can one expect good governance if the public service delivery system and other transactions are characterised by corrupt activities? The Anti-Corruption Commission seems to be ineffective. I am not sure why this is so but I do know that it is the institution which has been given the responsibility to fight corruption. Whatever the reason, government should ensure that this institution is well funded and assisted in whatever way to live up to the challenge, otherwise this fight against corruption we hear about every day will mean nothing at all. Most importantly the Commission should have adequate freedom to deal with individuals involved in corrupt activities regardless of their station in life. There should be no interference from anyone or any office.

The views of a government official in Mansa on corruption were no different:

There is no doubt that corruption is a serious problem in our country. The President declared 'zero tolerance' on corruption, and a task force was set up to investigate the plunder of national resources during the previous government. This is evidence enough that corruption in Zambia is real and needs to be vigorously fought before it completely eats away the social, economic and political fabric of our society. As a public official I feel ashamed that the public service has been associated with corruption whenever a study of some kind has been conducted. There is a need to change this state of affairs. The general public has a critical role to play in any efforts aimed at curbing corruption. The public should desist from giving bribes to public officials. We need to change this bad mindset where the temptation to give a bribe, whenever requesting a public service, seems to be so high. The Anti-Corruption Commission should be more visible and claim its right place in this fight against corruption. We need a law to protect whistleblowers so that people feel free to report cases of corruption. As the situation stands right now, transparency and accountability in the administration of public affairs is at stake.

Corruption and abuse of public office is also manifested in the unauthorised issuing of Zambian travel documents such as passports. Generally, public officials have both the knowledge and the authority to process such documents. A recent case in point is that of an immigration official who revealed that a

national registration official had been arrested in connection with the issuing of Zambian passports to Zimbabwean nationals.¹⁹

It therefore stands to reason that the misappropriation and/or mismanagement of public finances is a major problem. Generally, procedures requiring the expenditure of public finances - be it in a ministry, department or agency - entail the preparation of papers by some relatively junior official, and these need to be scrutinised by a senior official before payment is finally approved by an even more senior person. Such a procedure has been instituted so that any anomalies can be detected and fraudulent payments prevented, but from anecdotes recorded in the report - particularly in the section on corruption - it seems that individuals involved in the preparation of documents and the approval of fraudulent payments are precisely the people who organise and agree to steal from the public purse.

The observations of a Lusaka resident summarise the perception with regard to crime cartels who perpetrate corruption in public office:

President Mwanawasa is trying hard to change the attitude of public officials towards public funds. Unfortunately there are still many officials who were used to stealing in the past and they simply cannot stop. Stealing public money should not be as easy as it seems. There are procedures relating to how such money is spent and there is no way an individual can raise a payment, approve it, and even get the petty cash or go to the bank to cash a cheque. Surely, many people are involved in these things. It seems in some public offices groups of people simply agree to steal from their institution, using the approved procedures. Such people even have connections outside the public institution to generate fake requests for payment.

Regardless of the source of information and/or how the information was obtained, the study has noted serious concerns about the high levels of corruption in the country. Participants all expressed fears that corruption has permeated Zambian society and is becoming a feature of Zambian life.

Institutions judged most corrupt

In 2003, 456 cases of corruption were reported, with the Zambia Police Service topping the list with 112 (24,6 per cent) of reported cases. It was followed by

local authorities with 54 cases (11,8 per cent), the Ministry of Education with 40 cases (8,8 per cent), the Ministry of Lands with 30 cases (6,6 per cent) and the judiciary with 25 cases (5,5 per cent). These five institutions accounted for 57,3 per cent of all the cases reported to the Anti-Corruption Commission in 2003.²⁰

In 2004, a total of 384 suspected cases of corruption were reported to the commission, which was 15,8 per cent lower than the number of cases reported in the previous year. The Police Service held the top slot with 96 cases (25 per cent). The judiciary took second position with 50 cases (13 per cent), up from its fifth position in 2003. Local authorities were third with 41 cases (10,7 per cent) followed by the ministries of Education with 37 cases (9,6 per cent) and Lands with 24 cases (6,3 per cent).²¹

It is important to note that corruption was not necessarily proved in some of the cases reported. Some cases were referred for administrative action while others were dealt with by courts of law.

The Police Service is not the only law enforcement agency whose members have been involved in corrupt activities, as an editorial comment in a local newspaper noted:

While we agree with the observation that some officers in the Zambia Police Service are corrupt, we don't think they are the most corrupt of our security agencies. Our police operates on a very low budget and when one looks at the amounts of money that are being stolen through the Zambia Army, Zambia Air Force, Zambia National Service and Zambia Security Intelligence Services, officers from the Zambia Police Service can easily qualify to go straight to heaven without having to do time in purgatory.²²

People's perceptions on corruption, as captured by the Afrobarometer survey conducted in Zambia in 2005, clearly demonstrate that they perceive corruption to be rife in Zambian society. In answer to the question: 'How many of the following people do you think are involved in corruption, or have you not heard enough about them to say', the combined response that 'most of them' and 'all of them' were involved ranged from 31 per cent (judges and magistrates) to 70 per cent (police) for all categories of officials other than health workers (14 per cent) and teachers and school administrators (21 per cent), who elicited

the lowest responses. However, when the response category ‘some of them’ is included, the comparative status of health workers and teachers and school administrators be described as only ‘somewhat better’ with regard to their perceived likelihood to engage in corruption.²³

Corruption in Zambia, like most other crimes, is a scourge that is practised by people from all walks of life and top public officials are not an exception, as illustrated in box 1.

The Transparency International National Integrity Systems Country Study Report of 2003 also observed that during the past decade, there has been an absence of political will to fight corruption. A culture of impunity has developed and corruption has permeated government structures from the presidency down to the lowest-ranking public service workers. For instance, the Chief Justice was forced to step down after the Zambian Intelligence Service showed that he had taken bribes from President Frederick Chiluba from 1998 to 2001.

Table 3 Officials’ susceptibility to corruption, 2005

Category of officials	None (%)	Some of them (%)	Most of them (%)	All of them (%)	Do not know/ have enough data (%)
President/officials in his office	8	47	24	7	14
Members of Parliament	6	47	32	6	9
Local councillors	8	48	28	7	9
National government officials	6	45	31	6	13
Local government officials	6	43	34	6	11
Police	4	24	48	22	3
Tax officials	7	29	41	9	14
Judges and magistrates	11	51	25	6	7
Health workers	29	52	12	2	6
Teachers and school administrators	21	53	18	3	5

Source Afrobarometer, Survey – Zambia, 2005: summary of results

Box 1 Selected cases and allegations of corruption

- 2007: President Mwanawasa fires the Minister of Lands for alleged corrupt practices involving the allocation of plots – *Times of Zambia*, 2 March 2007
- 2007: The Anti-Corruption Commission is investigating the DEC Commissioner and Deputy Commissioner for abuse of authority of office involving about K1 billion – *The Post*, 25 July 2007 / *Sunday Post*, 26 August 2007
- 2003: The Zambian Army incurred a wasteful expenditure amounting to K95 500 000, which was paid to a local firm, Russel Mweene Engineering Company, for repairs to a front-end loader that only worked for two weeks
- 2003: In the Ministry of Finance and National Planning, payments amounting to K143 582 422, involving 20 transactions, were unvouched for because they were not supported by the relevant documentation
- 2001: A total of K73 billion meant for the Basic Education Sub-Sector Investment Programme disappeared. Many of the schools that were supposed to be built with this money were never built
- 2000: Amounts totalling K18 250 000 were supposedly repaid by eight clubs to the Provincial Community Development Officer in the Department of Community Development of the Ministry of Community Development and Social Services. However, there was no evidence that the money had been banked, the cash was not on hand, and there were no records to show how the money was used
- 1997: In May 1997, the Ministry of Education released an amount of K60 797 667 to the Provincial Education Officer for salaries for new teachers. It was noted, however, that out of the amount received, a sum of K35 650 668 was acquired by third parties without letters of attorney

DRUG TRAFFICKING AND MONEY LAUNDERING

In her 1998 article entitled ‘Illicit drugs: Zambia emerges as a gateway’, Mildred Mulenga observed that:

A decade ago Zambia was a mere transit point for illicit drugs destined for nearby South Africa. Today, it is a gateway and distribution centre for drugs going to Europe and North America. Fuelled by rapid urbanization and economic hardships, drug trafficking has increased substantially, luring some Zambians in search of quick money. The country’s DEC says trafficking has multiplied more than a thousand times over the past seven

years. The country's drug problems first came into the public limelight in 1985 when some 25 prominent Zambians were detained on charges of trafficking and a tribunal was set up to investigate the charges. 'It was from this tribunal that the country noticed that something had gone wrong with the economy and the people were using drugs ... to buy motor vehicles and other luxury goods,' notes the DEC Senior Assistant Commissioner Mukutulu Sinyani. An increasing number of Zambians are arrested for trafficking, of whom the majority of couriers are women. For example, 80 percent of the Zambians arrested abroad in 1996 and 75 percent of those arrested in 1997 were women ... Another problem associated with drug trafficking is money laundering ... In 1998 alone, the DEC seized about US\$3 million from one bank for involvement in money laundering.²⁴

After Mulenga's article appeared the country has continued to witness an increase in the incidence of drug trafficking and money laundering. Information on the problem is scant, however, and this is an issue that needs to be researched.

The reports mentioned in box 2 highlight that drug trafficking and money laundering have reached alarming proportions.

People living in conditions of poverty, with low incomes and high unemployment (75 per cent according to the 2005 Afrobarometer survey), may be tempted to become involved in various forms of crime, including drug trafficking. In an interview with a local newspaper, the president of the Zambia Congress of Trade Unions noted, for example, that:

Job creation has not been significant in the past year, even with the coming in of investors. There has been a lot of talk by the government on job creation but we still find qualified people without jobs. High levels of unemployment could also lead to insecurity due to crime as people would resort to illegal activities to earn a living.²⁵

According to many participants, the inability of employers, especially the public service, to pay termination benefits to those who have retired or have been retrenched is another factor that tempts people to engage in criminal activities. The general perception is that the rich are getting richer while the poor are getting poorer. These views were also captured in the Afrobarometer survey

Box 2 Selected reports and allegations of drug trafficking and money laundering

- The Drug Enforcement Commission destroyed 23 tonnes of cannabis worth more than K17 billion. The drugs, which were burnt in Lusaka's Shatumbu area, were confiscated from farmers in the Luano and Luangwa valleys – *Sunday Times of Zambia*, 5 October 2003
- The Drug Enforcement Commission arrested an employee of the Road Traffic Commission (RTC) on charges of forgery, uttering of false documents, fraudulent accounting, theft by a public servant and money laundering involving K700 million – DEC nabs RTC official for money laundering, *Times of Zambia*, 28 July 2005, <http://www.times.co.zm/news/viewnews.cgi?category=4&id=1115282218> (accessed 15 July 2007)
- Six foreigners and a Zambian national were nabbed in separate incidences for illicit drug trafficking and smuggling of government trophies – *People's Daily Online*, 12 August 2006, english.people.com.cn/200508/20/archive.html
- On 28 October 2006 the Drug Enforcement Commission arrested the Director of Planning at the Ministry of Community Development and Social Services for money laundering, and four other people for illicit drug trafficking – <http://deczambia.gov.zm> (accessed October 2007)
- The Drug Enforcement Commission arrested 14 people for money laundering and drug trafficking offences. One of the money-laundering cases involving K522 092 440 concerned an assistant treasurer at the Konkola Copper Mine. During the same period the commission also arrested an accounts clerk at the Judiciary Department as well as a female resident of Chilenje South for theft and money laundering involving K11,5 million, and fraudulent false accounting, theft and money laundering involving K42 million (August 2007) – <http://www.zana.gov.zm> (accessed March 2008)
- The President suspended the Commissioner of Lands in view of investigations by the Drug Enforcement Commission into alleged corrupt practices bordering on money laundering – <http://www.state.gov/p/inl/rls/nrcrpt/2006/vol2/> (accessed 18 August 2007)
- The Drug Enforcement Commission arrested a 28-year-old man at the Arcades Shopping Centre for being in possession of materials for making counterfeit notes – Zambia National Broadcasting Television News, 13 July 2007
- The Drug Enforcement Commission arrested a data processor at Premium Coatings Ltd for alleged money laundering amounting to K10 million – *Zambia Daily Mail*, 1 August 2007

conducted in 2005. According to this survey, almost seven out of every ten respondents (68 per cent) thought government was managing the economy either 'very badly' or 'fairly badly'; nine in ten felt the government was handling the issue of job creation either 'very badly' or 'fairly badly'; 62 per cent thought the government was handling the issue of keeping prices stable either 'very badly'

or ‘fairly badly’; and almost nine in ten (89 per cent) felt that as far as narrowing the gap between the rich and the poor was concerned, the government was doing either ‘very badly’ or ‘fairly badly’.²⁶

The remarks of one focus group discussion participant in Lusaka are typical of sentiments on this matter:

A household can do without a motor vehicle or a television set but cannot do without shelter, food, clothing, or health services. Heads of households have the responsibility to feed their families, take the children to school, and ensure that health problems are well attended to. Discharging this responsibility is very, very difficult for most people in our country today. It is in this respect that some people are willing to take a risk and get involved in all sorts of crimes if doing so can ensure the provision of some of their basic needs. Unfortunately, however, even some of those that are well remunerated and sometimes even holding high public office are the worst culprits. These people are simply greedy. Why would a minister, or service chief in the military or the police get involved in drug trafficking and corruption or money laundering? Are these people not the cream of our society? Are they not supposed to lead by example? When you see such people getting involved in all sorts of crime, what do you expect from the lesser mortals?

HUMAN TRAFFICKING

Human trafficking activities are taking place in Zambia, but no empirical research has been conducted to determine the extent of the problem. Because of its relatively weak economy, Zambia is a source and transit country rather than a destination for human trafficking.

Human trafficking in Zambia can be examined at both the external and internal levels. At the external level Zambia acts as a transit country for the trafficking of persons, mainly children and young women, from neighbouring countries such as the Democratic Republic of Congo (DRC). It would seem that friends, relatives and acquaintances living within and outside Zambia lure victims to countries such as South Africa with false promises of particularly job opportunities. The victims, particularly boys and young children, usually enter the country illegally and are then either sold (often to a brothel) or forced to

perform cheap labour. These victims find it very difficult - if not impossible - to return to their countries of origin. The fact that they are in the country illegally is used to keep them in line.

According to an official from the IOM, there is evidence that human trafficking syndicates are operating in the country. The matter is receiving serious attention by the government's investigative branches. In May 2007 the Immigration Department unearthed a scam in which human trafficking syndicates were using Zambia's tourism sector to camouflage its use of the country as a transit point. Five Bangladeshi nationals were arrested at Lusaka International Airport on charges relating to human trafficking:

The five Bangladesh nationals who came aboard Kenya Airways were arrested after they failed to give convincing reasons on why they were visiting the country although they had relevant travel documents and enough money. After investigations we found that they were being trafficked. What is happening is that these people come into the country as tourists. They use Zambia as a transit centre and they leave the country through South Africa and from there we do not know where they go.²⁷

Such syndicates seem to have been operating in the country for some time. In 2004 a group of 12 Asians suspected to be involved in human trafficking were arrested at a guest house in Lusaka's Helen Kaunda township in an operation conducted by a combined team of security forces. The Immigration Department suspected that the group was engaged in human trafficking in collaboration with an international syndicate in which Zambians were also involved. Suspects allegedly enticed Zambians by promising them lucrative employment and business opportunities in various parts of the world. The syndicate was believed to be involved in a number of other criminal activities, too. Investigations revealed that the ring had set up several command posts where agents were being paid to facilitate the exit of people from Zambia who were then used as cheap labour and for other questionable activities. These suspects paid an admission of guilt fee amounting to K1 million and were later deported from the country.²⁸

In a study conducted by the Central Statistical Office in 2006 (see the section on human rights), 22 per cent of girls and 20 per cent of boys reported knowledge of human trafficking. Six per cent of the children surveyed reported being trafficked, with 51 per cent of boys and 77 per cent of girls reporting sexual

abuse or being forced into prostitution at the time they were trafficked. Fifteen per cent reported knowing someone who had been trafficked while 52 per cent believed that the trafficked child had been sexually abused and 15 per cent believed the trafficked child had been kidnapped.²⁹

Most of the participants knew what human trafficking is and acknowledged the need for government to take concerted steps to fight the scourge before it reaches such a level that it is difficult to contain. Many participants reported having either heard about it on the radio, seen it on television, read about it in the newspapers, or heard rumours about human-trafficking activities. However, only nine of the 100 questionnaire respondents indicated that trafficking is a problem in the area where they live. This was the response of 6 of the 40 Lusaka participants (15 per cent) compared to only 1 of the 20 in Mansa (5 per cent), 2 of the 20 in Solwezi (10 per cent) and not a single participant in Chibuluma.

Only 16 of the 100 participants reported knowing someone whose friend or relative had been trafficked. Again, more Lusaka participants (30 per cent) reported on this, compared to 15 per cent in Solwezi and 5 per cent in Mansa. Although some Chibuluma participants knew what human trafficking was, not a single respondent of the structured interview reported knowing someone whose friend or relative had been trafficked.

From focus group discussions and key respondents a reasonable assessment could be made of the extent and perceptions of human trafficking in Zambia. Apart from four participants in Chibuluma, three each in Mansa and Solwezi and one in Lusaka, all the other participants in the face-to-face semi-structured interviews and focus groups discussions were clearly concerned about human trafficking and/or smuggling. Although most of these participants were not aware of specific cases of human trafficking, they strongly believe in its existence in Zambia, based mostly on media reports, official government statements and sensitisation radio programmes sponsored by the IOM. Reports of people that have gone missing or travelled abroad with the knowledge of their kinsmen but could no longer be contacted seem to underscore the reality of human trafficking activities in Zambia. In his contribution to a focus group discussion, with concurrence from some of the participants, a Solwezi participant noted:

The existence of human trafficking should not be discounted. Government is concerned about this problem and once in a while we have heard a government official talking about it. We read reports in the media, though

not frequently, and some of you could have listened to some adverts on radio warning people about false job opportunities in foreign countries and so on. Remember the saying that there is no smoke without fire. Here in Solwezi a child went missing from the Kandundu compound in 2000 and two more from the Chawama compound in 2004. There was a very strong belief that these incidents were cases of human trafficking. I think that given the various reports, government concern and some of the disappearances, it is necessary to play safe and take all the precautions to prevent people, especially children and young girls, from being victims of this problem.

The observations made by a key participant in Lusaka were not very different from those made by the Solwezi participant:

These are hard times. There are no jobs even for people completing university degree programmes, most people are living in poverty, and many children have lost their parents, especially through the HIV pandemic. In their quest to earn a decent living, some people are lured by adverts for employment in foreign countries, not knowing the potential dangers that lie ahead. We now have street children that are obviously vulnerable to all sorts of inhuman activities including human trafficking. In these circumstances it would be folly to imagine that the concerns of government on and/or the reports we hear about human trafficking activities in Zambia are mere fabrications. Just the other day a permanent secretary in the Southern Province expressed his concern about child trafficking in the tourist town of Livingstone and not too long ago an official from the Immigration Department alluded to the same problem. Surely one cannot dismiss these concerns or reports. The problem here perhaps is not yet serious enough to warrant a public outcry but it is here and we need to fight it before it gets out of hand.

Combating human trafficking

In combating human trafficking, Zambian authorities and the IOM are faced with the problem of ascertaining whether or not the ‘victims’ fall into the

Box 3 Selected media reports on human trafficking

- The Southern Province Permanent Secretary noted that child trafficking is mushrooming in Livingstone because the city is an exit and entry point to three different countries, namely Zimbabwe, Botswana and Namibia – *The Post*, 18 June 2007
- The Zambian government has smashed a scam in which children under the age of ten are adopted and flown out of Zambia without following proper procedures. The Minister of Community Development and Social Welfare noted that there were unconfirmed reports that over 17 had already been adopted and taken out of the country without government consent – *Times of Zambia*, 11 August 2007

category of human trafficking or are being smuggled. A person being smuggled chooses to move to another country, pays for the trip, is in control of travel and other documents, and is free to walk away upon arrival in the country of destination. A person being trafficked, however, does not pay or in certain circumstances pays very little for the trip, is not in control of his or her documents, if any, and is a captive upon arrival in the country of destination. Such a person is then used for the purposes for which he or she was trafficked. This distinction is critical in helping to ascertain the magnitude of the problem and in devising ways and means of dealing with human trafficking. However, it is important to emphasise that human trafficking in Zambia is real and incidents relating to this phenomenon have been reported in the media over the years and especially recently. However, this review acknowledges that anecdotal evidence and media reports are inadequate and need to be verified through empirical research.

According to an IOM official at its Lusaka office, human trafficking in Zambia is real and the Zambian government, through the Ministry of Home Affairs, is working with the IOM to combat this crime. The existence of human trafficking in Zambia is evidenced, for example, by the shelters operated by the IOM to assist victims that have been caught while in transit to other countries before being repatriated to their countries of origin. The IOM, in collaboration with the Zambian government, is also involved in the development of a curriculum aimed at facilitating various training activities to put the problem of human trafficking in Zambia in perspective.

For example, the IOM official observed that:

There is some evidence of human trafficking syndicates working in Zambia. It is, however, not easy to provide statistics on the extent of human trafficking in the country because of the unwillingness of victims to reveal their experiences and also because there is the stigma attached to human trafficking. The absence of research work on this phenomenon is also a contributing factor to the difficulties associated with providing statistical evidence. However, there is no doubt that human trafficking activities are taking place in Zambia.

In recognition of the problem, the Zambian government, through the Ministry of Home Affairs, is developing a national policy to combat human trafficking. Generally, the fight against human trafficking in Zambia is anchored upon the cooperation between the IOM, the Immigration Department, and the Victim Support Unit of the Zambia Police Service.

ILLEGAL MIGRATION

The Immigration Department, which falls under the Ministry of Home Affairs, is responsible for all matters related to migration and works in close collaboration with the IOM. Like in many other countries in sub-Saharan Africa, illegal migration is a problem in Zambia. The unstable political climate, coupled with poor economic conditions in some of Zambia's neighbouring states, has aggravated the situation.

Lack of capacity to monitor the country's porous borders - particularly with Angola and the DRC and to a lesser extent with Zimbabwe - is exacerbating the problem. Luapula Province in Zambia, for example, is separated from the DRC by the Luapula River, which is long and difficult to monitor. Effective monitoring of this border requires powerful and serviceable speed boats, adequate manpower, and sufficient financial resources to cover the cost of fuel, lubricants and spares. Similarly, effective patrols of the borders with Angola and Malawi require adequate and serviceable four-wheel-drive vehicles. From the research it is clear, however, that the available resources are not sufficient to ensure an effective check on illegal migration.

Illegal migration in Zambia is also informed by its historical perspective. Arbitrary colonial borders in many instances divided people belonging to the same clan, tribe and/or chiefdom. These ties still exist and in some cases contribute to illegal migration. As one focus group participant in Mansa noted:

It is sometimes difficult for people living in the border areas to grasp the concept of illegal migration. Take the example of Chief Matanda. He has two sub-chiefs in Zambia and five sub-chiefs in the Congo. Congo is simply across the Luapula River ... People from the Congo do not find it difficult to move freely in and out of Mansa. They have relatives here and some of them are even trading with their Zambian counterparts in various goods. There is a similar situation with Chief Puta, whose chiefdom extends into the Congo as well. Besides these factors, I do not think that the Immigration Department has the capacity to patrol the Zambia borders effectively. It is not easy, for example, to effectively patrol the Luapula River. People can cross into and out of the country at many points and at different times of the day and night. How do you deal with such a situation?

These historical and cultural factors apply to many of Zambia's other border areas, for example in North-Western and Eastern provinces. In Eastern Province, for example, Paramount Chief Kalonga Gawa Undi of the Chewa people has sub-chiefs in Mozambique. Officiating at the Kulamba traditional ceremony of the Chewa people, President Mwanawasa 'saluted Paramount Chief Kalonga Gaw Undi for his personal devotion in promoting culture among his subjects in Zambia, Malawi and Mozambique'.³⁰ The traditional ceremony was attended by Presidents Levy Mwanawasa (Zambia), Bingu Wa Mutharika (Malawi) and Armando Guebuza of Mozambique.

A further issue is that because of family relationships - and in some cases business connections - illegal immigrants have allegedly, with the support of locals, been able to obtain Zambian national registration cards and settle in local communities. While locals benefit from business transactions with illegal migrants, the government obviously does not receive its share of the revenue from such business activities. Participants in Solwezi and Mansa have for example acknowledged that a barter system popularly known as Makabu exists between the locals and illegal migrants. This system involves the exchange of Zambian agricultural produce for bicycles from the DRC.

Against this background it is not surprising that no deep-seated hatred towards illegal migrants was found among the participants. Although 60 per cent of the participants noted that illegal migration is a problem in the areas where they live, only 29 of the 100 respondents admitted to disliking illegal migrants. The reasons for their dislike are mainly that illegal migrants cause an

increase in crime and congestion and competition in trading activities, especially in local informal markets.

An interesting humane and accommodating attitude towards illegal migrants was also noticeable among the locals. This is summed up in the following observation by a focus group participant in Solwezi:

A person does not leave their own country to settle in a foreign country unless they are facing some difficulties or simply want to live among their kinsmen on the other side of the border. People facing problems of whatever kind need to be helped. Some of the so-called illegal migrants have relatives here in Zambia and some of them are doing business from which local people are benefiting. It is a pity though that most of them come in illegally. Maybe obtaining travel documents in their countries is very difficult. As long as these people go about their business without causing any problems I have nothing against them. Tomorrow it could be me. As Zambians we just need to be extra vigilant to ensure that those who get involved in criminal activities are reported to the police.

With regard to interpersonal trust, Bratton and Katundu found that Malawians were regularly considered more trustworthy than fellow Zambians outside their own families.³¹ This finding was constant even in areas outside Eastern Province, where there are fewer common ties with the Nyanja language and culture. The researchers also found that people who lived in rural centres trusted other ethnic groups more than their own tribesmen. Various statements were put forward to explain their attitudes, for example that 'people from other tribes are helpful; people from the same tribe are proud' and 'if anyone wishes you ill, it is likely to be a person from your own group', whereas 'visitors from outside areas have to be on their best behaviour'. This is not to say that respondents trusted all foreigners more than their countrymen. Very low scores were given to white South Africans and people from the DRC.

The findings generally suggest relatively high levels of receptiveness to and accommodation of foreigners among Zambian citizens, particularly of foreigners who are enterprising or who do not seem to pose any immediate threat to the local community. These sentiments are particularly prevalent in the country's rural centres, especially those areas that are close to the borders. Not surprisingly, these areas are also the main entry points for foreigners.

It is not surprising that the Immigration Department finds it almost impossible to deal with illegal migration - not only because of insufficient capacity, but also because locals readily tolerate illegal migrants. Although this observation is limited by the nature of the review, which dealt with a small sample of the population, many of the focus group discussion participants - as well as Zambians who did not take part in the structured questionnaire - have the same accommodating attitude towards illegal migrants.

Nonetheless, the Zambian government is concerned about illegal migration and is doing everything possible to control it, given its limited resources. In 2005, for example, the Immigration Department detained 2 768 illegal migrants of whom 310 were prosecuted and 648 paid an admission of guilt fine. When illegal migrants carried over from 2004 are included, the department physically escorted a total of 2 870 to their countries of origin and deported 96. In 2006, the department detained 3 056 illegal migrants of whom 225 were prosecuted, 2 590 removed, and 83 deported, while 552 paid an admission of guilt fine.

Obviously, immigration officers do still arrest illegal migrants. For example, between 11 and 13 May 2007 they arrested four DRC nationals who had been staying in the country illegally since November 2006, as well as 39 illegal migrants of other nationalities - including two Zimbabwean nationals who were in possession of Zambian passports and were trying to return to their country when they were arrested. The immigration official revealed that a national registration official had been arrested on a count of issuing Zambian passports to Zimbabwean nationals. The official noted that while it took locals over a month to obtain a passport, it was worrying that foreigners were able to obtain a passport within four days.³²

CRIMINAL GANGS AND ORGANISED CRIME

Organised crime in Zambia is not well documented, nor has it been the subject of an empirical study analysing the nature and/or trends of the phenomenon. Organised crime may be defined as 'a group or network of people which is primarily focused on illegally obtained profits, and in a systematic way commit serious crimes with great societal consequences. These groups or networks are capable of effectively covering up their crimes, in particular by using violence or means of corruption.'³³ According to Jansen and Bruinsma organised crime thus falls into two distinct categories: the supply of illicit consumer goods

(such as drugs) and services and the infiltration of legitimate business such as banking and the toxic waste, transportation construction industries.³⁴ Others argue that all criminal group activities that require some form of cooperation should be defined as organised crime. However, what seems to separate organised criminal activity from ordinary crime is the high level of entrepreneurial skill that is applied to its operations. This leads to the conclusion that many organised criminals are highly intelligent, and often possibly highly educated, and are extremely adaptable and adept at utilising and exploiting political and economic changes and technological advances.

Criminologists have battled to define organised crime³⁵ in a way that embraces all its complexities. Much of the evidence on organised crime is based on simplistic definitions that have given rise to the idea of organised criminals as a homogenous entity. Such reductionism tends to lose sight of criminal gangs that show a high level of sophistication in their organisation and activities. In Zambia criminal gangs are engaged in a variety of criminal activities including the theft of motor vehicles, assault and aggravated robbery, drug trafficking, human trafficking, money laundering, illegal poaching, and trafficking in military weapons.

Incidences of organised gangs terrorising communities have been reported. In parts of the country gangs of up to ten criminals attack during the night and make off with property worth millions. Residents of Kalikiliki compound in Lusaka, for example, suffered such criminal attacks in the early part of 2007.

CONCLUSION

Zambia, like many other countries, is grappling with increased levels of crime. The study has noted in particular the following concerns and challenges.

There is a lack of data on crime, which makes the need to improve crime information management systems a prerequisite for effective action. The prevalence of criminal activities is much higher in cities and towns, especially those located along railway lines and other main transport routes. High unemployment levels, the influx of people to the urban centres, and an inadequate police presence are some contributing factors.

The conduct of most officials in the public service and the lack of effective internal controls in the ministries and government departments have been singled out as contributing to the prevalence of corruption in the country.

Drug trafficking, money laundering and human trafficking are sources of concern to both citizens and the government. These criminal activities are exacerbated by the country's poor economic conditions, high unemployment levels, low salaries and poor conditions of service, especially in the public sector.

Illegal migration is a problem in communities living close to the borders with neighbouring countries. Inadequate staff and equipment, as well as the attitude of the locals, make it very difficult for the Immigration Department to effectively deal with the problem.

The national and provincial offices of the Anti-Corruption Commission need to be better staffed and equipped in order to ensure, among others, that research is undertaken into corruption and that countrywide sensitisation programmes are formulated and implemented. This calls for renewed political will and commitment to increase budget allocations to the commission if corruption is to be dealt with effectively. The Anti-Corruption Commission Act should also be reviewed to provide for the protection of whistleblowers.

Current initiatives by government in collaboration with the IOM to curb human trafficking need to be reinforced. Again, the sensitisation programmes being undertaken by the Drug Enforcement Commission need to be stepped up and instituted countrywide instead of being confined mainly to cities and towns.³⁶

The Immigration Department should receive adequate funding to ensure the availability of the necessary staff and equipment from the Ministry of Home Affairs if borders are to be effectively policed and illegal migration brought under control. The government should design programmes aimed at sensitising the citizenry on the dangers of harbouring illegal migrants. The links between illegal migrants and national development should be clearly articulated. This may require collaboration between government institutions and civil society organisations working in the area of human security, such as the Southern African Centre for the Constructive Resolution of Disputes.

3 Policing

POLICING ACTIVITIES

The Zambia Police Service

Accessing information on policing in Zambia turned out to be very difficult, as much of the information is deemed not to be for public consumption. In 2008 Amnesty International³⁷ also reported that it is difficult to gain access to information held by police authorities on criminal cases involving human rights violations by police officers, even for legal representatives of the accused, human rights organisations acting on behalf of victims or their families, and oversight bodies such as the Human Rights Commission. It would alleviate the situation if the Criminal Procedure Code contained a statutory requirement that the police have to fully disclose the relevant documents to the legal representatives of victims.

Policing legislation

The Zambia Police Service is provided for in the Constitution of the Republic of Zambia and the Police Act. Section 103 of the Zambian Constitution of 1991, as amended in 1996, provides for the establishment of policing services.

Article 104 outlines the functions of the Zambia Police Service as follows:

- To protect life and property
- To preserve law and order
- To detect and prevent crime
- To cooperate with the civilian authorities and other security organs established in terms of the Constitution and with the population in general

Comprehensive legislation on the organisation, functioning and discipline of the Zambia Police Force is provided for in the Zambia Police Act, 1965 (Act 43 of 1965). Legislation was amended in 1974, 1985, 1994 and 1999 to provide for the organisation, functions and discipline of the Zambia Police.³⁸ It 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 Act is divided into 12 parts. Part 1 (sections 1–2) contains the preliminary provisions, Part 2 (sections 3–6) deals with composition and administration of the Police Force, Part 3 (sections 7–12) provides for attestation, service and discharge, Part 4 (sections 13–25) regulates the powers, duties and privileges of police officers, Part 5 (sections 26–28) provides for offences by police officers that are tried in criminal courts, Part 6 (sections 29–41) makes provision for discipline, Part 7 (sections 42–45) regulates the disposal of unclaimed property, Part 8 (sections 46–47) deals with employment of police officers on special duty, Part 9 (sections 48–56) provides for special constables, Part 10 (section 57) deals with pensions and gratuities, Part 11 (sections 58–61) deals with general offences, and Part 12 (sections 62–64) contains miscellaneous provisions.

The legislative and constitutional provisions that provide for the Zambia Police Service meet the most basic requirements of the rule of law, which is defined by Carothers as a system in which the laws are public knowledge, are clear, apply to everyone equally, and uphold political and civil liberties.³⁹

However, the rule of law is threatened by emergency legislation. The Preservation of the Public Security Act, 1960 (Act 5 of 1960) gives the President extraordinary powers to detain any individual indefinitely. While the courts can force the police to produce a detainee, they do not have the power to call

Box 4 Legislative provisions**Penal Code (extracts) (1996)**

Penal Code Amendment Act, 2003 (Act 10 of 2003)

Police legislation

Zambia Police Act, 1965 (Act 43 of 1965)

Public Order (Amendment) Act, 1996 (Act 1 of 1996)

Zambia Police (Amendment) Act, 1996 (Act 14 of 1996)

Zambia Security Intelligence Service Act, 1998 (Act 14 of 1998)

Other criminal laws

The Dangerous Drugs Act, 1967 (Act 42 of 1967)

The Dangerous Drugs (Forfeiture of Property) Act, 1989 (Act 7 of 1989)

Mutual Legal Assistance in Criminal Matters Act, 1993 (Act 19 of 1993)

Narcotic Drugs and Psychotropic Substances Act, 1993 (Act 37 of 1993)

Anti-Corruption Commission Act, 1996 (Act 46 of 1996)

into question the activities of the security forces. Safeguards such as the right to challenge a detention no sooner than three months after being taken into custody are also rendered ineffective by the presidential powers.

Personnel numbers

At an institutional level, the rule of law requires a police force that is reasonably fair, competent and efficient. Operational capacity is a key determinant of effective and efficient policing. The Zambia Police Service currently has 13 000 officers. This is less than half the ideal complement of 27 000 officers who could reasonably be expected to provide reasonable policing.⁴⁰

The current recruitment drive is inadequate to meet the projected numbers. For example, in 2004 only 1 779 people were recruited into the police. The situation in the Zambia Police Service also mirrors the country's HIV/AIDS prevalence rate of 16 per cent. Death and illness as a result of opportunistic diseases stemming from HIV/AIDS place added pressure on the police force's human resource capacity.⁴¹

Management and resources

Katantamalundu notes that poor communication in the Zambia Police Service is an impediment to service delivery. The centralised bureaucratic structure

Table 4 Police recruitment rates

	Paramilitary	Police college	Mobile unit	Total
1999	195	402	188	785
2000	459	649	525	1 633
2001	459	–	–	–
2002	–	–	662	662
2004	199	1 381	199	1 779

Source Zambia Police, *Zambia Prisons and Police Service Establishment*, 2005

of the service and the absence of effective communication and information technology limit the effectiveness of the organisation. Communication within the service is hampered by the fact that the officer in charge must first agree to the authenticity of the information before it can be passed to the next level of policing.⁴²

Investigative capacity

A further serious impediment to the delivery of effective and efficient criminal justice is the lack of investigative capacity in most of the agencies. According to the Director of Public Prosecutions some crimes are not prosecuted because of a lack of credible evidence, mainly as a result of poor investigation techniques coupled with a limited forensic capacity.

There is an urgent need to improve investigative capacity. The Police Forensic Laboratory is still under construction and forensic samples are sent to the university teaching hospital or abroad for analysis. These limitations translate into a relatively low prosecution rate. However, cases that do get to court have a relatively high level of successful prosecution.

Victim support units

Reforms such as those embodied in the Zambia Police (Amendment) Act of 1996 have sought to target institutional weaknesses. One of these was the establishment of a victim support unit to address the needs of target groups such as women, children and the aged. Their mandate extends to cultural-related issues such as targeted victims (widows and orphans), especially in land

Table 5 Returns from the police during 2005

Division	Number of offences	Number prosecuted	Prosecution rate (%)	Number of convictions	Conviction rate (%)
Lusaka	22 683	8 811	31,1	7 170	81,4
Copperbelt	41 553	19 714	33,6	15 794	80,0
Southern	12 032	2 279	13,7	1 566	57,4
Eastern	4 299	2 232	37,5	1 497	67,1
Central	6 786	1 922	25,5	1 395	43,6
Western	4 513	2 487	26,8	1 085	72,6
North-Western	3 406	1 258	24,3	1 109	88,2
Luapula	1 751	–		171	
Northern	3 595	652	9,5	532	81,6

Source Zambia Police, *Annual report on crime statistics*, Lusaka: Government of Zambia, 2005.

grabbing and 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 units have made some notable progress in spearheading a vigorous educational and sensitisation campaign that was aimed at changing the mindset of the police and the public towards vulnerable persons.⁴³

Many civil society organisations such as the YWCA interact with the victim support unit. The YWCA was established in 1957 as a Christian, non-partisan NGO and is dedicated to the empowerment of the community, especially women and children. It acts as a watchdog on public and domestic abuse and victimisation of women and children, informs victims on their rights, and assists them with legal action against the perpetrators of inhumane treatment. Apart from protecting the victims who fall within their scope, the YWCA also undertakes empowerment programmes aimed at minimising the victims' dependency on those who abuse them and deprive them of their individual liberties. They also offer protection for victims and encourage them to take their parents or husbands to court for redress. Consequently, the YWCA is highly regarded in the communities. The outcome of many of the cases they handle is compensation for the aggrieved persons and in extreme cases, divorce.⁴⁴

Other policing agencies

Public order policing

The official objectives of the police paramilitary battalion is to provide a strike force in disturbed areas, guard vital installations, and provide training courses at their own school in the town of Kafue, south of Lusaka. A second paramilitary police force, called the Mobile Unit, is trained and based in Kamfinsa, outside the city of Kitwe. Its duties are defined as the reinforcement of 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. Both paramilitary forces have their own command structures, which ultimately report to the police Inspector General.⁵

According to a 2008 Amnesty International report police paramilitary units are often involved in ill-treatment of non-violent demonstrators. Police authorities have noted the problems of accountability that arise because paramilitary and Mobile Unit police officers operate under a different, separate, training and command structure from regular uniformed police officers. According to the commanding officer at the Zambia Police Training College, efforts are being made to phase out the paramilitary and members of existing paramilitary forces are either being retired or retrained.⁴⁶

Amnesty International has noted that in an effort to prevent past problems from recurring, the Mobile Unit recruits are supposed to be deployed to ordinary police posts upon completion of their training, rather than being retained as a separate force. In addition, in-service courses now bring together the regular police constables, sergeants, inspectors and station commanders for training with paramilitary and Mobile Unit officers of the same rank. These changes are a positive step by police authorities. However, the police record shows that police also need to be shielded from political pressure.

Neighbourhood watches

Increasing rates of crime and limited police resources have resulted in concerned residents acting to protect themselves through the establishment of neighbourhood watch groups. There have been reports that these neighbourhood watches at times act like vigilantes and sometimes clash with the police.

Partly because of their informal operations, the Zambia Police Act was amended to establish citizen crime prevention units.⁴⁷ These units are more

formalised than the neighbourhood watches and are supposed to be registered with the Crime Prevention Foundation of Zambia. The Act provides that any community may establish a crime prevention and control association in a residential, commercial or industrial area to complement the police force in the maintenance of law and order. Such an association must be registered in terms of the Societies Act, 1957 (Act 65 of 1957), as amended, and a copy of the certificate of registration must be lodged with the officer in charge of the police station in the area where the association is to operate.

Membership of the association is voluntary and open to any person who is normally resident or operates in the area or community where an association is established. The Inspector General may assign a police officer above the rank of inspector to an association. He may also, on request from the association, provide equipment and other requisites necessary for the prevention and control of crime to the association. The police are thus expected to be involved in capacity building within these units and to acquaint members of crime prevention associations with arrest tactics.

Since the amendments to the Act, the Crime Prevention Foundation of Zambia has been trying to phase out neighbourhood watches which have not been successful in reducing crime in their communities and replacing them with the more sophisticated citizen crime prevention units. These units are managed by civilians. More than ten units have been established in Ndola and recently also in Chifubu township, where a police post has been set up at the Malasha primary school.

Private security

Zambia's private security industry has been active and growing for some time. The money spent on private security is double that of the criminal justice system budget.⁴⁸

Legislation aimed directly at the private security industry is largely absent and the regulation of and means to hold the private security industry accountable are weak. However, the draft constitution under review by the Constitutional Review Commission does contain a proviso on the industry to the effect that 'the Minister responsible for police services shall register, regulate and supervise private security organisations'.⁴⁹ However, while many proposals from the constitutional review processes have been accepted by means of amendments, the numerous constitutional reviews on this issue have yet to come to fruition.

The private security industry is growing at an alarming rate and it is essential that legislation be put in place to regulate this industry.

Accountability

A key area of the governance of policing within a framework of the rule of law in a democracy relates to the effectiveness of mechanisms by which the institution is held accountable.

Parliamentary oversight

The Zambia Police Service falls under civilian authority in the form of the Ministry of Home Affairs and is subject to parliamentary oversight in respect of:

- The organs and structures of the Zambia Police Service
- The recruitment of persons into the Zambia Police Service from every district of Zambia
- Terms and conditions of service of members of the Zambia Police Service
- The regulation generally of the Zambia Police Service

Custody officers

Reforms were introduced in an ongoing effort to improve and professionalise the then Zambia Police Service by transforming it into a police service with the designation of custody officers.⁵⁰ This class of personnel was introduced in an effort to improve the conditions of police detention. It is accordingly a requirement that every person placed in police custody must first be presented to the custody officer before being placed in detention.

The functions of custody officers are to:

- Ensure that a person in police custody is treated in a decent and humane way
- Ensure that a person in police custody who requires medical attention has access to medical facilities
- Ensure that police cells or other places used for the custody of persons are in a clean and habitable condition
- Ensure that facilities used by a person in custody are in a hygienic condition

- Record the name, the offence for which the person is arrested and the state and condition of the person
- Make such recommendations about each person's well-being as are necessary, including the requirement for the person to receive medical attention⁵¹

Police Professional Standards Unit

The Police Professional Standard Unit was established in July 2003 to investigate corruption, arbitrary arrests and detention, and other unprofessional behaviour within the Police Service. The unit has the power to recommend action against any implicated officer(s) and is under the direct authority of the senior police prosecutions officer.⁵²

The Public Police Complaints Authority

The Public Police Complaints Authority (PPCA) was established in 2003. It has the power to investigate complaints from the public against the police as well as injuries or deaths in police custody. The PPCA submits its findings and recommendations to the Director of Public Prosecutions, Inspector General of Police and Anti-Corruption Commission.⁵³

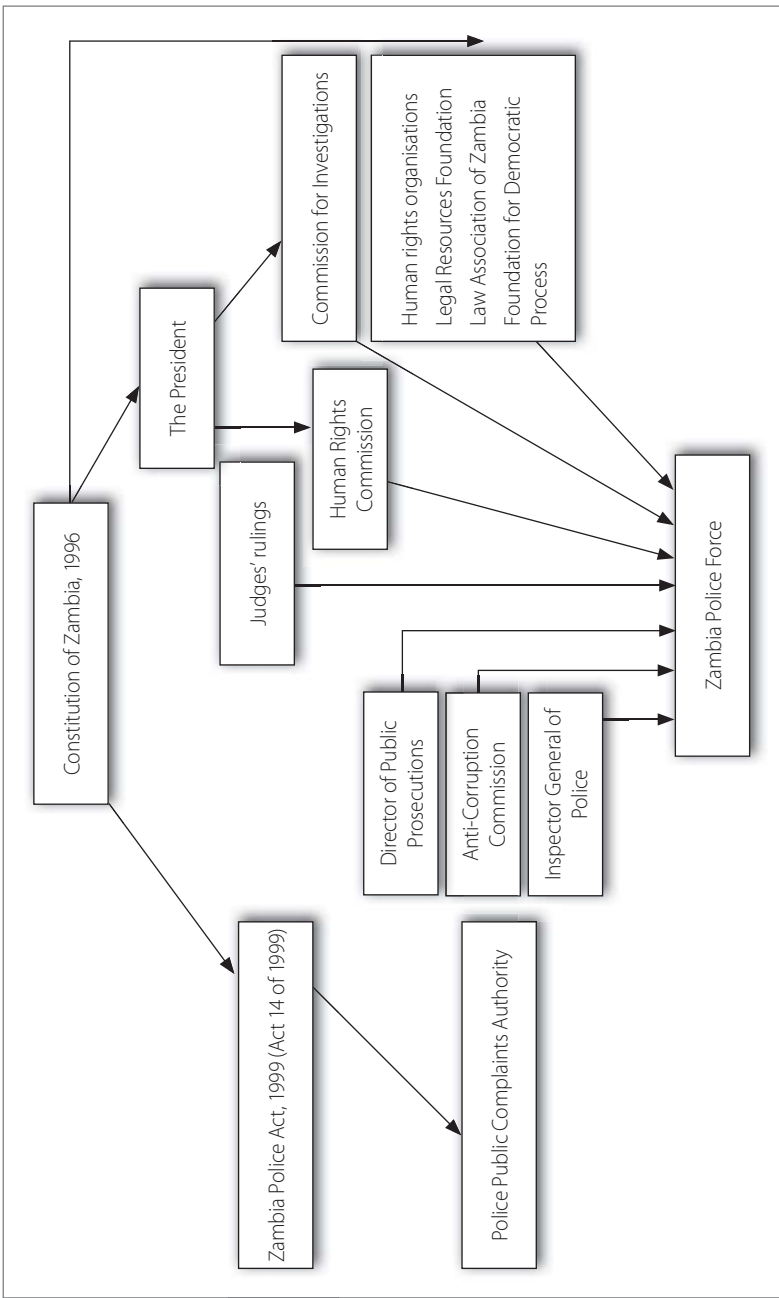
The Commission for Investigators

Article 90 of the Constitution and the Commission for Investigations Act, 1991 (Act 20 of 1991) make provision for a commission to deal with complaints of abuse of power such as arbitrary decisions, omissions, improper use of discretionary powers, decisions made with bad or malicious motives or those influenced by irrelevant considerations, unnecessary or unexplained delays, obviously wrong decisions and misapplication and misinterpretation of laws.⁵⁴ This commission, which is the equivalent of an ombudsman but with less power, reports to an Investigator General, who in turn is answerable to the President. Calls for the commission to be converted to an ombudsman have not been heeded.⁵⁵

Other oversight mechanisms

Other oversight mechanisms include the judiciary, which is able to rule on the legality of police action, the media and civil society, and is also able to set up commissions of inquiry to investigate incidents. For example, after the failed coup in 1998, the President appointed a commission of inquiry into torture allegations and the violation of human rights with regard to the alleged suspects.

Figure 1 Structure of oversight mechanisms for the accountability of the Zambia Police Force



Source: J Berg, Police accountability in Southern African Commonwealth countries, Paper commissioned by the Commonwealth Human Rights Initiative, Institute of Criminology, University of Cape Town, 2005

The findings resulted in the dismissal of three top-ranking officers (including an assistant superintendent and a commissioner of police) while 22 other officers were either demoted, lost some earnings or were transferred to stations lower than their ranks.⁵⁶

Civil society

Civil society also plays an important oversight role. Organisations such as the Legal Resources Foundation (LRF) provide legal aid, promote human rights, and litigate in the public interest. The LRF also supports citizens in challenging the law enforcement system when their rights have been violated, as the case in box 5 illustrates.

Oversight assessment

Despite the many oversight mechanisms the system remains weak. The Police Professional Standards Unit has only dealt with three cases since its inception.

Box 5 LRF takes police officers and the state to court

The LRF has taken three police officers and the state to court on behalf of two soldiers who were allegedly assaulted and injured by ten police officers last year. Maurice Katolo and Eldridge Zyelee are seeking compensation for special damages and the property and cash they lost in the process. Katolo and Zyelee contend that they suffered loss and damage and were deprived of their personal liberties and lost their property because of the inhuman treatment they were subjected to by the named police officers. The two are being represented by the Legal Resources Foundation chambers lawyer Mweetwa of Lusaka. It is alleged that the ten police officers battered Katolo and Zyelee in December 2006 leaving Zyelee with a fractured left arm and leg. This was after the two soldiers picked a quarrel with a minibus conductor from Flush Bus Services in Lusaka on December 2, 2006 over K1 200 change that was owed to them. Katolo contends that the police officers from Libala and Kabwata police stations had continued beating them despite showing them their military identity cards and pleading with them to take them to the police station to be charged. Due to the beatings from the police officers, Zyelee sustained a fractured right leg and arm and a Plaster of Paris (POP) was put on his right leg and left arm while Katolo had a POP on his right leg. Katolo was later detained at Kabwata Police Station while officers continued beating him with a gun butt and iron bar while teasing him to defend himself as he was a soldier. The duo was denied medical forms from Kabwata Police Station until Lusaka district commanding officer intervened in the matter. This case is still in court (*The Legal Resources Foundation News*, 2005).

Since its establishment the PPCA has received 825 complaints, made 45 rulings and dismissed 13 officers for abuse of authority. However, many citizens continue to lack information on their rights and where and how to seek redress.⁵⁷

An investigation by Amnesty International⁵⁸ has revealed that police oversight arrangements are not systematic or effective in ensuring that those responsible will be brought to justice. This failure creates the perception in the minds of the Zambian public and police officers themselves that the police enjoy immunity from investigations that might lead to the punishment of misconduct. Providing more human rights training to police officers, raising the educational requirements for new officers or other reforms cannot make up for the lack of an impartial, systematic and effective investigation into the violation of human rights by police officers.

Key issues

Police brutality

In a question and answer session in Parliament in 2007, the Deputy Minister for Home Affairs noted the government's concern about the high level of police brutality and the abuse of human rights by police officers. The Minister revealed that in 2006, 83 complaints of unlawful detention were received against the police. Three of them had since been finalised while 80 were pending. In the same year, 40 cases of police brutality were recorded, of which two had been finalised and 38 were pending. The Minister told Parliament that in the light of these numbers, government had put in place measures to reduce the cases of brutality and abuse of inmates' human rights by the police.⁵⁹

Promoting human rights

The upholding of human rights is a cornerstone of democratic governance and the rule of law. Nowhere is respect for human rights more critical than in the policing agencies, given their ability to use deadly force and deprive people of their liberty. The police training curriculum has recently been reviewed to include human rights law as a subject and the entry qualification for police officers was increased to a Grade 12 full certificate.⁶⁰

The state-supported human rights training programmes for law enforcement officers are conducted through the Zambia police and prisons service colleges. The Human Rights Commission for Zambia has also conducted workshops

for 8 172 law enforcement officers to train them in human rights.⁶¹ Senior and junior officers are trained separately. Likewise, the ACC and DEC have introduced ethical training for their staff members. The latter trained 442 officers in 2004 and the former has conducted workshops for its staff at all levels, resulting in 208 staff members being trained. The ACC has also drafted a code of ethics for the service.⁶²

Other NGOs have also contributed to the training law of enforcement agency personnel on human rights. The Institute of Human Rights, Intellectual Property and Development has supported advanced training for officers in the police, enabling them to pursue higher diplomas and postgraduate studies in human rights at the University of Zambia. Current plans include the revision of the human rights curriculum so it can be adjusted to suit the needs of different officials, such as interrogation officers and prison wardens. In 2003 the Ministry of Home Affairs issued guidelines on the standards for the interrogation of suspects and the treatment of prisoners in custody.⁶³

Public perception

The acid test for policing in terms of its compliance with human rights standards and rule of law principles lies in the way it is perceived by those being policed. The UNODOC victimisation survey of 2003 revealed that more than 50 per cent of Zambians are dissatisfied with the performance of the police force while 46

Table 6 Complaints received about law enforcement agents, 1998–2002

Year	Complaints received	Complaints completed		Complaints pending	
		Number	Percentage	Number	Percentage
1998	972	345	35,5	627	64,5
1999	986	312	31,6	674	68,4
2000	933	694	74,3	239	25,7
2001	823	684	83,1	139	16,9
2002	1 000	720	65,4	380	34,6
Total	4 814	2 755	57,2	2 059	42,8

Source Anti-Corruption Commission, *Complaints register, 2003*

per cent expressed satisfaction with their services. However, 69,3 per cent were dissatisfied, specifically with how the police handle crimes.⁶⁴

The levels of dissatisfaction are not borne out by complaints received by the Human Rights Commission and are thus possibly indicative of dissatisfaction with institutional capacity and access problems.

An assessment of perceptions on the efficiency and effectiveness of the Zambia Police Service was also undertaken during this study and questions specifically on the police were posed during personal interviews. Police-related issues were also discussed during focus group discussions.

The majority of respondents rated the service as fairly efficient. Respondents based their answers on a number of factors, including lack of a timely response to crime calls, lack of professionalism in handling offenders, use of unnecessary violence in dealing with suspects, and violation of the rights of persons in police custody.

Focus group participants rated the efficiency of the service as almost average. However, they agreed that the environment in which police officers operate was not conducive to good performance and efficiency. Some participants attributed poor performance by police officers to inadequate training, especially lack of knowledge on basic law and the need to protect people's human rights.

Respondents from the general public were also asked to rate the effectiveness of the Police Service and 80 per cent of respondents rated the service as somewhat effective. The respondents attributed their poor rating to the lack of vigour and innovation in the service. Most added that as far as they were concerned, the performance of police officers in the country was below their expectations.

The issue of public perceptions of the effectiveness of the Police Service was discussed by the focus groups, and most participants rated the performance of police officers as below par. They agreed that this could not be blamed only on logistical shortages such as the lack of vehicles. In order to be effective, police officers should plan and execute interventions effectively.

Some respondents blamed the poor rating of the service on a lack of efficiency and effectiveness, stating that the Zambia Police Service failed to protect people's rights and liberties and failed to live up to citizens' expectations. As a result, the public has lost confidence in a service which did not seem to have much credibility and integrity. The performance of the police in the country is generally poor and its public image needs attention.

Respondents also felt that the police presence is largely concentrated in densely populated urban areas, while rural police stations remain understaffed and equipped with obsolete equipment. For example, most police stations lack adequate and operational motor vehicles for responding to emergencies, so that in many instances cases were not investigated. This contributed to low public confidence in the service.

Factors most often cited as having a negative impact on how law enforcement services were assessed were the shortcomings inherent in the service. These include a shortage of police officers, late arrival at crime scenes, the long distances people have to travel to police stations or police centres, perceived corruption in the service, and a lack of protection for whistleblowers in the country.

Despite the overall negative perceptions of the police, it was found that the public image of the Police Service was improving, mainly because of the operationalisation of structures created in accordance with police reform projects, such as the Victim Support Unit and Police Public Complaints Authority.

However, it was established that lack of public awareness on their rights regarding police brutality and violence and the existence of the Victim Support Unit, as well as a limited knowledge of the PPCA, limited the potential benefits of these reforms.

FIGHTING CORRUPTION

The Anti-Corruption Commission

Corruption, like most other types of crime, is a source of concern to the government as well as the general citizenry. The years following the country's entrance into the Second Republic in 1991 saw a rise in the incidence of corrupt activities which led to the creation of the Anti-Corruption Commission (ACC).

The ACC is an autonomous institution. Its duties are set out in the Anti-Corruption Commission Act and include:

- The prevention of corruption in public and private bodies
- The investigation of complaints of alleged and suspected corrupt practices
- The prosecution of offences under the Act
- The investigation of the conduct of any public officer which may be connected to corrupt practices

- The dissemination of information on the dangerous effects of corrupt practices on society
- The enlisting and fostering of public support against corruption

The declaration of zero tolerance of corruption by the late President Levy Mwanawasa's New Deal government and the subsequent appointment of a task force to investigate the plundering of national resources during the previous regime under former President Frederick Chiluba constitute an official acknowledgement, from the highest office in the land, of the high levels of corruption in the country.⁶⁵

However, the level of convictions for corruption remains low, amounting to only 6 per cent of corruption cases investigated in 2005, 5 per cent in 2006 and 7 per cent in 2007.

This situation, among others, points to insufficient investigative capacity on the part of the Anti-Corruption Commission. A factor that has contributed to the low conviction rate is the withdrawal of key witnesses during court proceedings.

It is important to note, however, that the ACC has not carried out a survey to determine whether the corruption situation is improving or worsening. This observation is especially important considering that the ACC sometimes receives reports and complaints that do not relate to corruption issues. Such reports are normally referred to appropriate government institutions such as the Immigration Department or the police. What is certain, however, is that the ACC has dealt with reports involving corruption that cut across the social

Table 7 Reported cases of suspected corruption, 2005 to June 2007

Year	Total number of reports received	Complaints received	Information received	Investigations authorised	Investigations not authorised	Prosecutions registered	Convictions
2005	1 571	861	712	491	384	30	11
2006	1 979	954	1 025	660	1 244	33	10
June 2007	1 048	482	566	249	800	19	4

Source Compiled from Anti-Corruption Commission reports, 2007

and professional divide. The sentiments captured in the interview with the ACC underscore the gravity of the situation.

There have been corruption cases that have involved permanent secretaries, government ministers, and heads of department at both provincial and district levels. Some of these cases were inconclusive as there was insufficient evidence to take the matter to court. In such cases administrative action was recommended. In some of these cases the accused were acquitted, others are still in court and some are still under investigation. Generally speaking, however, we can confidently say the Zambian people - especially the Zambian government - have recognized and acknowledged that corruption is a problem in our country. About 90% loss of government funds is through corruption by those in high places. The outcry from the general public means that the people of Zambia understand that things are not as they should be and that they want things to be better than what they are currently. The fact that the donor community is raising issues of governance whenever they fund developing countries like Zambia and corruption being one of the governance issues raised, has helped the government put emphasis on the need to combat the scourge.⁶⁶

Between 2005 and June 2007 the ACC dealt with a total of 17 cases involving senior government officials, including permanent secretaries, government ministers, a commissioner and deputy commissioner of a government agency, and MPs. Fifteen of these cases are on-going while the other two have since been closed.⁶⁷

A great deal remains to be done in order to clean up the operations of public institutions and ensure effective accountability of public finances. The Secretary to the Cabinet, for example, has noted that the recent revelations of unaccounted for public funds are a clear demonstration of erosion of the foundations of the civil service and government. For example, during a review workshop for controlling officers in Lusaka the Secretary noted:

There have been frequent reports in the press of deep concern by oversight institutions regarding the abuse, misapplication, mismanagement and outright misappropriation of public resources. The oversight institutions which have expressed dismay at our performance in managing public funds include, but are not limited to, the Office of the Auditor

General, the Public Accounts Committee, the Committee on Estimates and the Committee on Government Assurances ... In all these instances of misapplication of funds, there is a controlling officer who authorises a payment to be made for such shoddy work. In all such cases there is a controlling officer who has allowed a situation where work has been certified as complete and having met the stipulated standard for payment to be effected ...⁶⁸

Evidence shows that reports of the Auditor General have persistently raised concerns about ineffective internal control systems in the ministries. The Auditor General has over the years reported many irregular payments made by public institutions.⁶⁹ The Public Accounts Committee of Parliament has also on many occasions called upon the Ministry of Finance and National Planning to improve the internal control mechanisms in the government.

Transparency International - Zambia has catalogued numerous financial irregularities in public institutions and specifically observes:

No one knows exactly how much Zambian public money has been stolen or misappropriated since 1964 when the country gained its independence. Not even the Office of the Auditor General (OAG), which has the constitutional mandate to keep tabs on government expenditure. However, it is established that about K348 244 billion worth of public money is either misappropriated, stolen or grossly mismanaged every year. That translates into K6 964 trillion from 1984 to 2004.⁷⁰

High-profile cases relating to abuse of public office and/or corruption that were or are being investigated and/or heard in the courts of law include those of former President Frederick Chiluba, two former air force commanders and a former commander of the Army and National Service, a director and deputy director (on suspension) of the Drug Enforcement Commission, a former Minister of Lands, and a former commissioner of the Prison Service.⁷¹

Developing the capacity of the ACC

At present the ACC does not have the capacity to deal adequately with corruption. This problem is exacerbated by the lack of ability of other law enforcement

Box 6 Lack of ability of law enforcement agencies to fight corruption

- Corruption is rampant because there are major problems with the enforcement of the law, although Zambia does have the legal framework for combating corruption. The different institutions that are supposed to enforce the law have lamentably been unsuccessful
- The Electoral Commission, for example, lacks the capacity to enforce the electoral regulations and the code of conduct related to electoral malpractice. The commission cannot prosecute anyone for engaging in electoral malpractice, including corruption, and it cannot disqualify candidates engaged in corruption either
- The electoral law does not prohibit the distribution of relief food, agricultural inputs or implements, as well as presidential donations from the presidential discretionary fund. The impact of such actions on the fairness of the electoral process cannot be underestimated
- The ACC and police have not done well as far as prosecuting cases of corruption are concerned either, even though the law has given them broad powers to enforce laws relating to corruption
- Clearly, the ACC has not been effective in combating corruption in Zambia, as the exponential growth in corruption in Zambia illustrates. The Transparency International Corruption Index for 2001 ranks Zambia as the ninth most corrupt country in the world
- Insufficient personnel and finances and the lack of political will combine to adversely affect the commission's ability to fight corruption. The requirement that the Director of Public Prosecutions authorise prosecution for corruption also undercuts the effectiveness of the ACC, not least because it causes delays in prosecutions. Furthermore, it opens the doors for political interference in the operations of the ACC
- The Police Service is mandated to enforce law and order and to detect and prevent crime. This includes enforcement of laws aimed at curbing corruption. Like other institutions, the Police Service has been rather ineffective in this respect. Police officers themselves regularly feature in cases of corruption in the courts of law

Source Transparency International - Zambia, Presentation to the Parliamentary Committee on Legal Affairs, Governance, Human Rights and Gender Matters, 2002.

agencies whose mandate also encompasses corruption prevention. In its presentation to the Parliamentary Committee on Legal Affairs, Governance, Human Rights and Gender Matters in 2002, for example, TI-Z made some observations that painted a dismal picture of the fight against corruption, as shown in box 6.

The Afrobarometer survey undertaken a year later shows that the situation had not improved. According to the results only 38 per cent of the respondents felt the government was handling the fight against corruption 'very well/fairly well'. The majority of the respondents (54 per cent) felt that government was

handling the fight against corruption ‘very badly’ (28 per cent) or ‘fairly badly’ (26 per cent). The remaining 9 per cent ‘didn’t know’. The TI-Z 2005 Bribe Payers Index revealed that 71,9 per cent of the respondents were of the view that government was not doing enough to reduce bribery and corruption. More than half of the respondents (51,9 per cent) felt that the police was the institution with the highest bribe prevalence.⁷²

Until recently, the ACC has focused on investigations and prosecutions. However, the government, through the ACC, has now developed the National Anti-Corruption Policy and Strategy in recognition of the need to harmonise and coordinate the country’s efforts to curb corruption. Among others, this strategy is expected to locate the ACC in the mainstream of governance reforms in the country. It targets corruption in the core business of the public and private sectors. The strategy targets corruption at the point of service delivery to the public, misappropriation and misapplication of state assets, state capture, and corruption in the electoral process. The three components of the public service reform programme - public expenditure management and financial accountability, public service management, and decentralisation - all contain elements aimed at preventing corruption. The mainstreaming of the ACC’s operations in these programmes is critical to the success of efforts aimed at combating corruption.

One strategy that the government is implementing through the ACC is appointing and training focal persons in the various ministries, departments and agencies to form integrity committees (ICs). Members of the ICs are responsible for facilitating the development and internalisation of a code of ethics within their organisations, deciding on measurable steps to be taken to reduce corruption within the institutions and reaching agreement with senior management and the ACC. The ICs are monitored by the ACC. There is also an IC within the ACC where members of the general public can lodge complaints of inefficiency and administrative malpractice. So far pilot ICs have been introduced in a few ministries and local authorities. However, the media has been emphasising that the system can only work if there is enough public scrutiny of the work of the ICs.⁷³

The design of anti-corruption activities and programmes should, however, take into account some of the difficulties that constrain the fight against corruption. Only then can an appropriate and feasible anti-corruption strategy be developed.

The National Baseline Survey, for example, revealed that 1 003 of the 1 500 respondents (66,9 per cent) would not be willing to pay taxes towards eliminating corruption. Of this group 831 (82,9 per cent), representing 55,4 per cent of the sample, cited poverty as the reason for their unwillingness. Except for Central (37,2 per cent), Copperbelt (44,4 per cent), Lusaka (45,7 per cent) and Luapula (49,1 per cent) provinces, the level of unwillingness in the remaining five provinces ranged from 59,3 per cent (Eastern) to 70,6 per cent (North-Western).⁷⁴

In its efforts to curb corruption and reduce the misappropriation of public resources, the ACC has tabled an amendment bill, the Anti-Corruption Commission Amendment Bill, which is aimed at compelling chiefs of defence forces, senior public officers and accounting officers to declare their assets, income and liabilities to the Chief Justice annually.

However, many people clearly regard the current Anti-Corruption Act to be inadequate as an instrument for fighting corruption. The need to include the protection of whistleblowers in anti-corruption legislation, for example, is perceived to be critical in the fight against corruption. A significant level of autonomy in the operations of the ACC is also desirable. There is also a need to enhance the visibility and accessibility of the ACC so as to improve the reporting of corruption cases by members of the general public. The presence of the ACC at provincial level only is clearly insufficient and greatly limits opportunities for public engagement in the fight against corruption. It is also important that community outreach activities of the ACC should be stepped up to engage the citizenry in ways that help to change attitudes.

Role of the media

Both the print and electronic media seem to be living up to the challenge of keeping the citizenry informed about corruption activities in the country regardless of the social standing of the culprits. This is especially the case with the private media, whose autonomy is comparatively greater than that of the public media. The role of the media in curbing corruption is well appreciated by participants in the review who strongly believe that bringing such crimes to light has a salutary effect on would-be offenders and helps to reduce the incidence of the scourge. These sentiments were echoed by one of the focus group participants who lives in Chibuluma:

Criminal activities, of whatever nature, should be exposed. It does not matter who is involved. In fact, if a person of high standing in society is involved in any crime, including corruption, such an act should hit the headlines in the newspapers and radio and television news so that they are disgraced. Media houses and radio stations should be on the lookout so that the people are well informed on the perpetrators of corruption in our country. We are lucky that there are a number of privately owned newspapers and community radio stations. If the government-owned newspapers like the *Times of Zambia* or *Zambia Daily Mail* do not want to report certain cases, we are assured that we get the information from their friends who are more independent.

In recognising the important role the media can play in the fight against corruption, the ACC chairperson noted:

The media should be interested in the ACC integrity committee's activities and the activities of other integrity committees, namely the Zambia Police, Immigration Department, Ministry of Lands, the ZRA, Ndola City Council, Lusaka City Council and Public Service Pensions Fund, because this is one sure way of ensuring that the integrity committees are accountable and the initiative works.⁷⁵

Regional and international cooperation

There is cooperation between the ACC and similar institutions at regional and international level. At regional level Zambia is a member of the Southern Africa Forum Against Corruption, which was founded in 2000. This is an informal group of anti-corruption agencies in the region whose main focus is on combating corruption in the Southern Africa region. Its objectives include strengthening networks among its member organisations; keeping members informed of appropriate legislation and relevant international instruments against corruption; building the capacity of anti-corruption institutions through training; cooperating on and facilitating the investigation and prosecution of corruption cases; identifying and sharing experiences on best practices in combating corruption; and sharing relevant information and intelligence on corruption.⁷⁶

At the international level, the ACC is a member of the International Association of Anti-Corruption Authorities, an organisation made up of a worldwide group of anti-corruption agencies. Its major objective is to create a platform from which members can network and share information on corruption investigations and prosecution of cases. The ACC benefits from this cooperation through training opportunities for its officers and also by collaborating on investigations of corruption cases within the jurisdiction of these countries.

With respect to international conventions and special resolutions on crime, Zambia took the following steps:

- Signed the UN Convention against Corruption on 11 December 2003, but has not yet ratified it
- Ratified the African Union (AU) Convention on Preventing and Combating Corruption in 2005

It is important to note that the Ministry of Justice, which is responsible for domesticating treaties, still has to domesticate these two treaties.

Public perceptions

Most members of the public interviewed about the efficiency and effectiveness of the ACC rated them to be average. However, some respondents argued that ACC officers have not created a presence in the communities and that members of the community who may wish to report suspected cases of corruption have no means of locating or reaching them to make their reports in confidence.

This study found that public access to the ACC is limited largely because of a lack of capacity in terms of human resources at all levels. Most rural districts do not have ACC officers and rely mostly on secondary information on corruption cases from the Office of the President. This has resulted in corruption cases going unreported or taking long to be resolved, which reduces public confidence in the ACC. The establishment of the Task Force against Corruption in 2002 is largely seen as a vote of no confidence in the capacity of the ACC to fight corruption.

Public access has also been hampered by the lack of a legal framework for whistleblowers. On many occasions ‘informers’ have found that they are not

adequately protected by law. There is a need for a legal framework that will not only provide protection but also reward whistleblowers.

One positive step is the creation of the Community Education Department which has enhanced the dissemination of information on anti-corruption activities.

POLICING DRUGS AND MONEY LAUNDERING

Drug Enforcement Commission

The Drug Enforcement Commission (DEC) was established under two Acts, the Narcotic Drugs and Psychotropic Substances Act, 1993 (Act 37 of 1993) and the Prohibition and Prevention of Money Laundering Act, 2001 (Act 14 of 2001). The goal of the DEC is to control and prevent the illegal production of narcotics, combat abuse of narcotic drugs and psychotropic substances and money laundering, and provide rehabilitation services to drug addicts in order to contribute to socio-economic development and the maintenance of internal security.⁷⁷

The DEC, in recognition of the pervasiveness of drug abuse and trafficking, is taking a holistic approach to ensure these are dealt with in an effective manner. Through its specialised wing, the National Education Campaign Division, the commission provides counselling, education and rehabilitation services to drug addicts free of charge. Apart from the use of theatre productions, brochures, posters and T-shirts the division conducts education and sensitisation programmes on drug and substance abuse to communities. Using similar means, the division works with learning institutions including the University of Zambia and Copperbelt University, as well as colleges and other institutions such as Project Concern International, Human Resource Trust, Fountain of Hope, Care International, and Peer Outreach against Drug Abuse.

The sensitisation programmes are aimed at promoting community awareness of the dangers of drug abuse in an effort to reduce the demand for illicit drugs. Through the division the commission is identifying groups at risk of drug abuse and enlightening local communities, institutions of learning and workplaces on the effects of drug abuse.⁷⁸

Other measures being taken include:

- Sensitisation workshops for various stakeholders, including High Court judges, the House of Chiefs and journalists

- Interactive radio programmes targeting farmers, called ‘Radio farm forum’, in conjunction with the National Agricultural Information Services
- Partnerships with traditional leaders and village headmen who have pledged to fight cannabis cultivation in their chiefdoms
- The DEC has acquired at great cost pedigreed sniffer dogs and initiated a sniffer dog breeding and training project that is expected to contribute enormously to the fight against the illicit drug trade across the borders and ports of entry of the country
- Increasing the number of training slots for officers within the country and abroad

Clearly drug abuse and trafficking is receiving attention and there seems to be a reasonable level of commitment on the part of the commission to combat the problem. This commitment is illustrated by the following comments of a DEC official:

The commission has embarked on its expansion programme to ensure its presence at the district level. The commission is trying hard to identify and crush illicit drug syndicates. It seeks to prevent the illegal production and trafficking of narcotics and psychotropic substances in Zambia in order to reduce the supply and preserve the integrity, security, and morals of society. To achieve this, the commission is taking a proactive approach to investigate drug cases, identify illicit drug cartels in the country and their links abroad and exterminate them.

Money laundering

The government, through the Bank of Zambia, has issued anti-money laundering directives to all banks and financial institutions operating in Zambia. The directives require the following, among others, from the regulated institutions:

- Put in place such anti-money laundering measures and adopt such practices as are necessary for the detection and prevention of money laundering
- Require individual customers to produce specified documents when opening an account, establishing business relations or conducting business transactions

- Appoint a money laundering reporting officer responsible for keeping all reports made by employees of the regulated institutions and ensuring effective communication with law enforcement agencies
- Train employees, irrespective of level of seniority, on what money laundering is and why it is important to report any suspicious transactions to the money laundering reporting officer

The directives also provide a lengthy schedule on how to identify suspicious activities and contain information on suspicious customer behaviour, customer identification, cash and credit transaction activities, wire transfer transactions, safe deposit box activity, commercial account activity, trade financing transactions, investment activity, deposits, and miscellaneous suspicious customer and employee activities.⁷⁹

Regional and international cooperation

It was noted that the DEC enjoys good interagency cooperation with other law enforcement agencies locally, including the police and ACC. With respect to relevant international conventions and special resolutions Zambia has:

- Acceded to the 1961 UN Convention on Narcotic Drugs as amended by the 1972 Protocol
- Acceded to the 1971 UN Convention on Psychotropic Substances
- Ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on 28 May 1993
- Ratified the UN Convention against Transnational Organised Crime and the accompanying protocols
- Ratified the SADC Protocol on the Combating of Illicit Drugs, 24 August 1998
- Signed a bilateral agreement with India on the combating of drug trafficking and related issues in 1993

Public perceptions

The limited capacity of the DEC is viewed as the single greatest impediment to improving public access to the institution. Generally, public knowledge of

the DEC was found to be fair. This can be attributed to numerous educational campaigns that the DEC has conducted over the years and which have led to greater awareness among the general public of the dangers of dealing in illicit drugs and money laundering, and the benefits of getting rid of these evils.

The efficiency of the operations of the DEC was rated at above average by the majority of respondents from the general public, who nevertheless emphasised the need for improvement. However, in the focus group discussions it emerged that the effectiveness of DEC was in fact not above average but was constrained particularly by the long delays in concluding its cases. This has led to some members of the public questioning the capacity of the DEC to deliver services as efficiently as was expected.

A further negative perception about the DEC and its operations stemmed largely from the commission's lack of facilities for the rehabilitation of drug users. Participants argued that the DEC was only interested in securing convictions and not in providing a lasting solution to the problems of drug trafficking and drug abuse. This argument was backed by the high recidivism rate among persons convicted on drug offences.

Delays in concluding investigations, violations of human rights, suspected coercing of witnesses to secure convictions, brutality and abuse of power by law enforcement officers from the DEC and ACC were advanced as the main reasons for a poor public perception and the low rating these institutions received from the public.

RECOMMENDATIONS

Community education to promote awareness

Recent reforms, and particularly the establishment of Victim Support Unit and the PPCA, are to be commended. However, findings about the limited awareness by members of the public of their rights and the functions of the Victim Support Unit and the PPCA show that improvements are needed with regard to public awareness on police misconduct. To maximise their benefits and reduce police victimisation and violation of people's rights it is recommended that a public awareness campaign be developed and implemented.

It is further recommended that the DEC undertake increased sensitisation of the general public on the gravity of drug cultivation, use and trafficking.

Improving policing capacity

Police training

A lack of or limited capacity in many key areas was found to be one of the major weaknesses of all the public law enforcement agencies that formed part of the review. This undermines efficient service delivery. There is a particular need to strengthen capacity in the areas of policing and human rights. Professional training of police officers should include modules on accountability and public trust, while induction programmes should focus on what it means to be a police officer in a democratic society, with special emphasis on policing by consent. Training can be provided through existing institutions such as National Institute of Public Administration.

Combating the impact of HIV/AIDS

To offset the impact of HIV/AIDS, appropriate measures should be taken, for example:

- Re-training and training to replace officers who have died from AIDS and planning for those who are infected by the HIV virus
- Embarking on effective HIV/AIDS awareness programmes
- Conducting a baseline study on HIV/AIDS in the institutions in order to establish 'the realities on the ground'
- Mainstreaming HIV/AIDS in the operations of these security organisations to protect the staff and the communities they serve, in order to bring about sustainable, efficient performance in service delivery

Improving the resources for policing

An aspect that goes hand in hand with improving the police and their agencies' capacity to fulfil their functions optimally is that the resources they have for carrying out their jobs need to be improved too.

Establishment of a resource centre

The ACC lacks adequate research and information resource facilities on corruption. This makes it difficult to investigate cases and keep records of them. The current practice of relying on secondary information that comes from the Office of the President can lead to inaccuracies, inefficiencies and delays. In

order to improve the professionalism of the ACC it is recommended that the ACC acquire a modern resource and research centre on corruption.

Development of a research programme

It is recommended that a research facility or criminal justice inspectorate be established to provide regular reports to Parliament on the state of policing and criminal justice system in the country.

Establishment of a forensics laboratory

It is recommended that a reliable and modern laboratory for forensic analysis be constructed. Such a laboratory is critical to the effective functioning of the Zambia Police Service and the DEC.

Strengthening the legal framework

It is recommended that an inspector general be appointed to the Zambia Police Service and that he or she should be appointed by an independent body, such as a parliamentary committee or service commission, which should be ratified by Parliament. The same recommendation is made with respect to the ACC and DEC. In each case this will ensure that the body in question is autonomous and thus prevent political interference in the functioning of these three law enforcement bodies.

The Anti-Corruption Act and other relevant legislation should be amended to include a mechanism for whistleblowers with regard to all forms of misconduct – be it police violations, corruption or drug-related activities. Corruption prevention reforms should also be introduced.

Promotion of oversight and transparency in law enforcement

The Public Police Complaints Authority, which is the current oversight mechanism, needs to be strengthened. The principle of transparency should be strengthened throughout the criminal justice system to promote accountability and good governance.

A complaints authority should be established for the ACC as well as for the DEC. This will provide checks and balances and may serve as a deterrent to

abuse of power and violation of people's rights. This role could be played by the PCCA.

Zambia is definitely not short of policing legislation. The major problem is in making it clear, through public demonstrations, that violations of human rights by the police will not be tolerated. Furthermore, it is only through the exercise of political will at the top of the political hierarchy that this can be achieved.

In this regard torture, cruelty and inhuman treatment should be criminalised. The study has shown that despite the implementation of police reforms and the subsequent establishment of victim support units and the PCCA, cruelty, torture and degrading treatment of suspects and offenders by officers of the Zambia Police Service continue to occur. Domestication of the ratified Convention Against Torture is essential. Evidence shown to have resulted from torture should be made inadmissible in a court of law. This can be done partly by criminalising acts of torture by government law enforcement officers and other security personnel. The integrity of investigations and the safety of witnesses must be protected at all times.

Penalties and sanctions

The current penalties for convicted offenders in corruption, money laundering and trafficking in drugs are inadequate and can therefore not be regarded as a satisfactory deterrent. It is recommended that existing penalties for these offences be reviewed. Stiffer sanctions should be offset by increasing the capacity of rehabilitation facilities for drug addiction.

Accountability

This study concurs with Amnesty International recommendations that an independent police complaints authority be established to ensure proper investigation of human rights violations by members of the Police Service. An independent authority would receive citizens' complaints, investigate them and take criminal and/or disciplinary action against police officers found to have perpetrated human rights violations. To be truly effective, such an authority should have full powers under law to deal effectively with complaints, including enabling powers to order the release of persons held unlawfully and powers to

ensure immediate access to police dockets, statements and post mortem examination reports.

We concur with the view of the present Human Rights Commission and the one made in 1998, that the establishment of an independent tribunal to handle complaints against police, immigration and prison officers would ensure proper community involvement in such a body.⁸⁰ The Human Rights Commission proposed that membership of such a body be drawn from members of the commission, representatives of the prison, police and immigration services at senior command levels, representatives from the Law Association of Zambia and other NGOs, church organisations, the Medical Association of Zambia, the Nursing Association of Zambia, as well as other civil society organisations concerned with police and prison issues.

It is essential that the Human Rights Commission be empowered to assist in oversight of the police. The Human Rights Commission should have the necessary powers to pursue its own independent investigations, including the power to access police records, interview witnesses and take corrective action in cases of torture or unlawful shootings. The paramilitary police should be encouraged to be more accountable, too.

It is imperative that victims of police abuse not be required to obtain police medical reports or forms as proof of their experience. This discourages victims from speaking out against police brutality.

CONCLUSION

The principle of transparency should be introduced into the policing component of the criminal justice system. Such transparency demands that public sector institutions perform openly and in policing, it requires that the officials record their discussions and produce reports that the public can access and scrutinise. If the performance of public officers is not scrutinised, they are more likely to act in their own interest or in the interests of the small members of the privileged elites, thereby abusing the public's trust and contravening the rule of law. It is thus recommended that a mechanism to enhance transparency be developed for the Zambia Police Service, Anti-Corruption Commission, and Drug Enforcement Commission.

4 Prosecutorial services

LEGAL FRAMEWORK

In Zambia, the power to institute and undertake criminal proceedings is vested in the Director of Public Prosecutions (DPP). The office was created in terms of the Constitution but set up under the executive and not the judiciary branch. The DPP is appointed by the President subject to ratification by the National Assembly.

The functions of the DPP are to:⁸¹

- Institute and undertake criminal proceedings against any person before any court other than a court martial
- Take over and continue such criminal proceedings as have been instituted by any other person or authority
- Discontinue at any stage, before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority

The powers of the DPP are not contained in any specific Act, but mainly in sections 81–89, 241–243, 251 and 321A of the Criminal Procedure Code. The DPP

can enter a *nolle prosequi*⁸² to stop proceedings and has the responsibility to sanction or consent to the institution of certain types of charges. He has the power to appoint public prosecutors from among any public servants in any district. The DPP has sole prosecuting powers irrespective of the fact that there are prosecutors in other institutions such as the ACC, the DEC and the Zambia Revenue Authority (ZRA). The National Pensions Board also derives its authority from the powers delegated to it by the DPP.

The DPP has the power to appeal any judgment of the subordinate court that he feels is legally wrong or in excess of the law. This makes it a key institution in the effective prosecution of cases of corruption and other abuses of public office. Unfortunately, during the regimes of both Kaunda and Chiluba the authority of the office of the DPP was eroded because there was a reluctance to check government excesses. While newer institutions have been set up with semi-autonomous structures, the DPP has remained an integral part of government. This lack of autonomy has compromised its role and its prosecution is often considered to be inconsistent. It is essential to strengthen this office, particularly in view of the slow judicial process.

ORGANISATIONAL CAPACITY

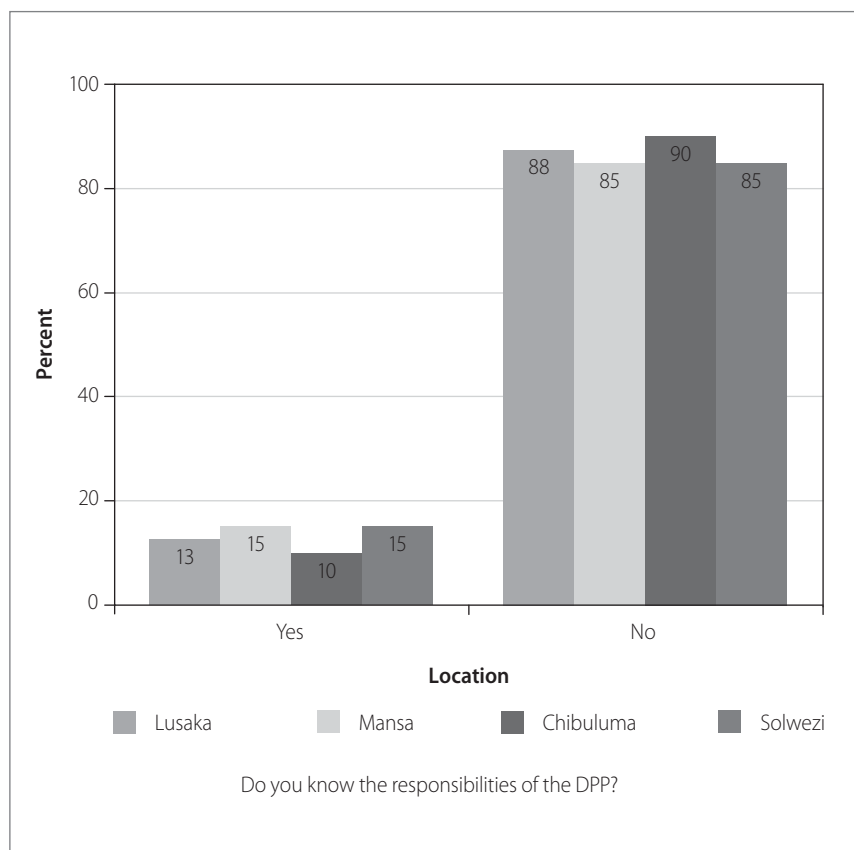
There are five provinces in which the DPP's office has no representation, namely Eastern, Western, Northern, Luapula and North-Western provinces. Even though there is an office in Central Province, no advocate is stationed there. This may partly explain the level of public 'ignorance' about this office. Prosecution in the country is yet to be coordinated under the direct supervision of the DPP.⁸³

PUBLIC PERCEPTION

Public awareness

The average Zambian citizen knows little about the role and function of the DPP. In the sample used for the survey questionnaire of this review, only 13 per cent of respondents knew anything about the role and responsibilities of the DPP.

The views expressed by two focus group participants in Lusaka and Solwezi cited in box 7 typify public ignorance about the DPP's office.

Figure 2 Knowledge of the Director of Public Prosecution's responsibilities

Appointment of the DPP

There is a growing public perception that the office of the DPP lacks prosecutorial independence in criminal cases that involve high-ranking public officials. The Anti-Corruption Commission has in the past criticised the DPP for preventing some high-profile prosecutions. The majority of the DPP's prosecutions are carried out not by lawyers in chambers but by police officers that are appointed as prosecutors in the name and authority of the DPP and they only prosecute cases in the lower courts. Since police prosecutors are not trained lawyers, they do not perform very well against well-qualified defence attorneys.

Box 7 Public sentiment on ignorance about the DPP's office**Lusaka resident**

It is rather strange that such an important institution is not known to most of us. From the description you have given us about this office and its functions, I would have expected that maybe only one or two of us in this group would be ignorant about it, but now it is almost everyone. This is especially unfortunate when you consider that this important office is in fact located here, in Lusaka. I have no doubt, from the description you have given, that the DPP makes very important decisions relating to the implementation of justice. With so many crimes being committed by different people in our society, I think it is very important that as many citizens as possible know the role of this office and how an individual comes to occupy this position.

Solwezi resident

Is it not a shame that only three people in this group have expressed knowledge of this important office? Surely, an office that has the power to stop an investigation or to discontinue court proceedings without giving any reasons must be well known to many citizens. This is a critical office as far as the maintenance of transparency and accountability in the dispensing of justice is concerned and it must therefore be known by many people. But from what I have seen here, I would not be surprised if this high level of ignorance about the DPP is the same countrywide.

Participants were of the opinion that the current manner in which the DPP is appointed gives excessive power to the President and undermines the independence of the institution. However, a minority of participants who were comfortable with the current manner of appointment argued that MPs are elected people's representatives capable of making a decision on whether or not the 'appointed' or 'nominated' individual meets the requirements of the office.

Nevertheless, respondents who knew about the DPP's office did not think that its operations were free from interference. The general consensus in focus group discussions was that it is very difficult to advance a view that is not shared by the authority that appointed you. It is important to emphasise that from the nature of the DPP's responsibilities, it inevitably requires regular interaction with the appointing authority. Some participants did feel that the aim of the method of appointment was to provide checks and balances in the investigation and prosecution of corruption cases. However, others held the view that this manner of appointment in fact constrains the operations of the DPP and creates the potential for interference with the discharge of justice.

Security of tenure

According to some participants all prosecutors, including those in the DPP's office, should enjoy security of tenure similar to that enjoyed by the DPP. This will somewhat enhance their autonomy and facilitate a culture of professionalism in their operations. A major concern is that security of tenure of the DPP is meaningless given that the DPP's office is not funded directly by Parliament but through the Ministry of Justice. The security of tenure needs to be backed by financial autonomy to plan and execute various decisions. The argument is that under the current circumstances, it is less likely that a DPP would for example be keen to support, let alone spearhead, investigation of a government minister who is involved in funding of the office. These are realities that should not be understated.

Nolle prosequi

General concerns were expressed about the ability of the DPP to dispose of cases by means of a *nolle prosequi*. The case of a permanent secretary from the Ministry of Health, who was later charged with one count of abuse of authority of office and two counts of corruption, highlighted issues of external interference in the operations of the DPP's office. When a *nolle prosequi* was initially entered in this specific case, there was an outcry from many stakeholders and interested parties, including some foreign diplomats, as box 8 shows. The result was that the state withdrew its support for the *nolle prosequi* and the DPP was directed to reinstitute criminal proceedings against the permanent secretary. Observers agreed that this turn of events underscored the vulnerability of the DPP's office to external interference.⁸⁴

Fragmentation

The DPP's office lacks the necessary capacity partly because of professional fragmentation. The location of public prosecutors in different institutions is perceived to have a negative impact on the ability of the DPP's office to deal with prosecutorial matters effectively and expeditiously and generally cannot benefit from the advantages associated with having a cohesive pool of professionals. As a result, it contributes to difficulties in enhancing prosecutorial capacity in the DPP's office. Therefore the recommendation is that all public prosecutors function under one umbrella institution.

Box 8 Public sentiment on the *nolle prosequi* entered into the case of a permanent secretary

- In reference to the *nolle prosequi*, a foreign envoy noted that ‘government’s decision raises concern. If government is committed to the fight against corruption it would only be fair to explain why that kind of decision has been made ... If the former Permanent Secretary is innocent and such a decision is made, government should explain’ – *The Post*, 31 May 2005
- The President of the Federation of Free Trade Unions of Zambia observed that, ‘As a federation, we are disappointed by the handling of corruption and we now conclude the fight was not genuine. It was a personalised fight. It’s full of hatred, vengeance and contradictions’ – *The Post*, 31 May 2005
- The President of the Zambia Congress of Trade Unions noted that ‘the case had to some extent eroded the fight on corruption ... The zero tolerance stand has become a mere slogan and people will not take it seriously ... Zambians did not expect those in positions of authority to interfere with the process of the law’ – *The Post*, 31 May 2005
- Another foreign envoy noted that ‘it would have been better if the courts had been left to make a decision ...’ – *The Post*, 7 June 2005
- The Director of the Jesuit Centre for Theological Reflection observed that, ‘The Zambian people did not know why the State entered a *nolle prosequi* and if the case faded, the whole cause against corruption would be weakened in the minds of the ordinary people ... This is a very serious matter that affects people and the full facts must be brought forward’ – *The Post*, 8 June 2005

NATIONAL CRIMINAL PROSECUTIONS POLICY

Delays in dealing with criminal cases, congestion in remand prisons and high levels of acquittals have been cited as evidence of inefficiency in the prosecution service.⁸⁵ In order to improve the efficiency and effectiveness of the DPP’s office and safeguard its independence, the government mandated the Ministry of Legal Affairs to produce a comprehensive national criminal prosecutions policy (chapter 34 of the *Laws of Zambia*). The policy document is the first step towards building a national prosecution service that would be open and honest in its dealings with the public.

A draft national criminal prosecution policy was drawn up and among others contained the following recommendations:

- The government should enact legislation to establish an independent national prosecution service
- The prosecution function should be separated from the investigative function and accordingly the practice of appointing police officers as prosecutors should be discontinued
- Public prosecutors should be seconded from the DPP's office to the Zambia Police Service, ACC, DEC and other law enforcement agencies to deal with cases as they arise. This should reduce the delays occasioned by the need to transfer cases to the DPP's office for legal advice or consent to prosecute

However, despite the fact that some of these recommendations were made in 2000, none of them have been implemented to date.

RECOMMENDATIONS ON THE NATIONAL CRIMINAL PROSECUTIONS POLICY

Although the draft national criminal prosecutions policy was presented in March 2002, the document has not yet been finalised. This should be done as a matter of urgency and specifically the following aspects should be addressed:

Appointment of the DPP

Legislation should be put in place on the appointment of the DPP in which a method is adopted that is more likely to guarantee the independence of the DPP's office. Two recommended methods for appointment are:

- The Judicial Service Commission should recommend a person for the position of DPP, who is then appointed by the President. Suitable individuals should be invited to apply for the position and then be selected on merit after a process of selection that includes formal interviews
- A tribunal of judges or a board of independent persons could recommend two or three candidates, in order of preference for appointment, to the position of DPP by the President. The tribunal or board should provide reasons for their selection and preference. Such a tribunal or board should be appointed through a constitutional mechanism

Financing

Government should consider the possibility of financing the DPP's office directly through Parliament rather than a government ministry. This will not only enhance the independence of the DPP's office but also promote realistic and effective financial planning. It is envisaged that such financial autonomy would, in the long run, help to build the capacity necessary for the effective operation of the DPP's office.

Transparency

In order to enhance accountability and transparency in the decisions made by the DPP, legislation should be reviewed to ensure that reasons for entering a *nolle prosequi* are made public. Furthermore, the restructuring of the DPP to provide for prosecutors attached to various agencies, such as local authorities, the ACC, the DEC, the ZRA, and the National Pensions Board, must be considered to empower these agencies and harmonise standards by bringing all public prosecutors under one umbrella institution.

Alternatively, the recommendation made in the draft policy on secondment of public prosecutors from the DPP's office to the different law enforcement agencies to deal with cases as they arise should be implemented.

Community awareness

Government, in collaboration with the Law Association of Zambia and civil society organisations working in the areas of human security, human rights and the maintenance of good governance, should institute programmes aimed at sensitising the general public on the functions of key constitutional offices such as that of the DPP.

5 The courts

THE LEGAL SYSTEM

As a former protectorate of Great Britain, Zambia has retained the English common law system in its adjudication of crime. As a result of the colonial legacy, Zambia has a dual legal system made up of general law (the Constitution, statutes, case precedents, subsidiary legislation and English common law, principles of equity and selected statutes) and customary law. The features of this system are the adversarial litigation process and involvement of lawyers in the prosecution and defence of accused persons. This duality applies to a limited extent to criminal cases, which means that although the majority of offences are covered by statutory law, some minor offences may be handled under customary law. Customary law is also be applied occasionally to serious criminal offences simply because the parties involved do not report the offence to the police, preferring instead that it is dealt with by the chief or other community leader.

The general law is mainly vested in the Penal Code and the Criminal Procedure Code, but it is also found in the penal sections of most other pieces of substantive legislation, such as the Justices Criminal Procedure (Amendment)

Act, 2003 (Act 9 of 2003) and various amendment Acts pertaining to the Penal Code. Equality before the law and the right to fair trial are guaranteed in the Constitution. The common law system is also viewed as the general law system that is conceptually superior to the parallel traditional customary law system. However, the customary concepts of crime and punishment are the ones known and understood by the majority of the population.⁸⁶

Zambia's local courts, the courts of first resort for customary law matters, apply very little procedure and lean more towards substantive justice. Consequently their handling of criminal cases is limited to the simplest and most common offences, such as violations of council by-laws, customary law offences and penal offences that carry minimum punishments. In order to ensure simplicity of process, lawyers are not generally allowed to appear in these cases.⁸⁷

Despite the substantial difference in approach between the local courts and the higher courts, the former are considered to be an integral part of the formal court system. Cases from the local courts go to the subordinate courts, High Court and Supreme Court on appeal or review, although their admission to these higher courts necessitates a re-hearing of the matter in the subordinate courts in order to create a record that is acceptable in the higher courts.⁸⁸

A rigid procedure is set out in article 18 of the Constitution and in the Criminal Procedure Code that is intended to ensure that impartiality and the rule of law prevail in the criminal justice system. The emphasis is on procedural justice. In theory, the criminal trial process begins with the appearance of an accused person before the court. The action is based on a formal charge stating the offence at hand. In presiding over the trial, the court is guided by several principles, the most important of which are the presumption of innocence and that the prosecution bears the burden of proof and must prove its case beyond reasonable doubt.⁸⁹

The accused must then be afforded a fair hearing within a reasonable time before an impartial public tribunal established by law. During the trial, the accused has the right to put up a defence personally or through a legal representative. Particularly at High Court level, he has the right to question the testimony and other evidence of the prosecution, and the rules of evidence and procedure that are strictly applicable ensure that unfair evidence is excluded. He also has the right to an interpreter and to receive a copy of the proceedings

against him. The accused is protected against double jeopardy and *ex post facto* law and has a right of appeal all the way to the Supreme Court.⁹⁰

The death penalty

In 2005 then President Levy Mwanawasa commuted the death sentences handed down on 12 criminals convicted for violent crimes (such as murder) and grave crimes (such as aggravated robberies) to life imprisonment or lower sentences. Mandated by law to sign the death warrants, the president refused to do so because he was against the death penalty. The Zambian President has the constitutional power to forgive or commute sentences of prisoners who would have been found guilty by the Supreme Court on appeal.⁹¹

Prior to this, there had been widespread discontent after 44 convicted soldiers of the 1997 failed coup, including masterminds Jack Chiti and Steven Lungu, were given the death sentence. When this judgment was upheld by the Supreme Court while ten others were freed after they were proven innocent, it sparked widespread protests. The Supreme Court dismissed their appeal against conviction and sentence on the grounds that the prosecution had proved they were involved in the failed coup.

The death penalty for murder, aggravated robbery and treason is maintained in the statute books of Zambia, despite President Levy Mwanawasa not signing any death warrants during his tenure.⁹² Most people who made submissions before the Wila Mungomba Constitutional Review Commission (2005) argued that the death penalty should remain on the statute books. Since 2001, 41 people have been sentenced to death, although none of them has been executed. The Prerogative of Mercy Committee has thus been actively lobbying against the death penalty since 2001 and a number of death sentences have been reduced to life or terminable sentences. The last execution took place in 1997.

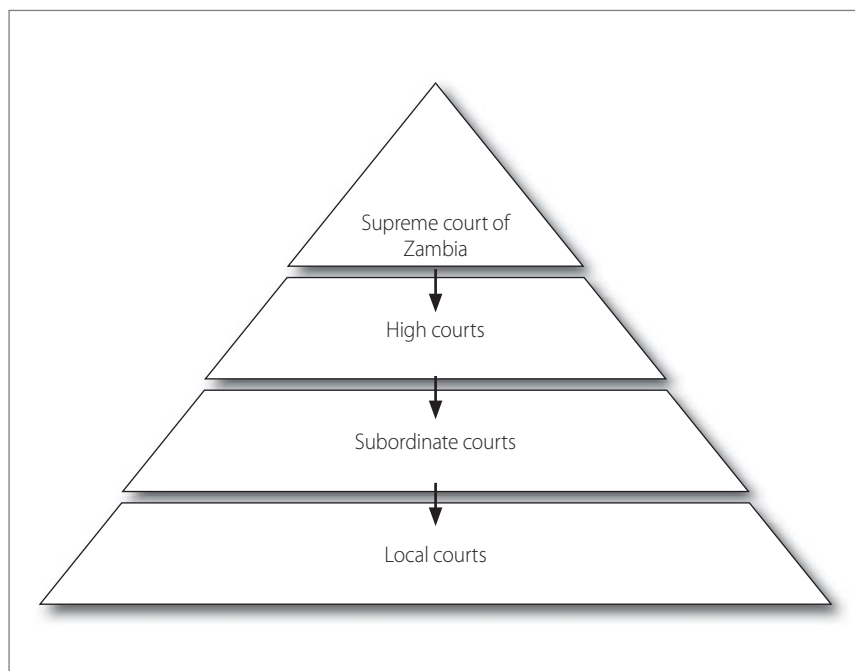
Although the President has the prerogative to pardon a convicted person or to reduce the sentence under article 59 of the Zambian Constitution, it would nevertheless be significant progress towards respect for human rights if an immediate moratorium on the use of the death penalty is declared for Zambia. This would bring the country in line with international and regional trends towards the abolition of the death penalty.

THE COURTS

Structure

The courts of Zambia can be represented in the shape of a pyramid, with more than 464 local courts at the bottom and the Supreme Court at the very top. Between the two lie the subordinate courts located in every district and the high courts that are situated in the provincial capitals.⁹³

Figure 3 The courts of Zambia



Supreme Court

The Supreme Court was created in terms of article 92 of the Constitution and the Supreme Court Act, 1973 (Act 41 of 1973). It is the final court of appeal with supervisory jurisdiction over all other courts. It has no original jurisdiction and therefore does not hear matters as a court of first instance, except in the case of presidential election petitions. An unprecedented number of election petitions,

including a presidential petition, were heard during the course of 2002 following allegations of rigged elections in December 2001.⁹⁴

The Supreme Court hears appeals from the High Court in both civil and criminal matters and closely follows the current procedure in England. The Supreme Court bench has a total of nine judges and a minimum of three or such other greater uneven number as may be necessary to hear cases in Lusaka, Ndola and Kabwe. Criminal appeals may be made against the lower courts' findings of fact, law or sentence imposed. Thus the court may hear and admit evidence, can allow the appellant bail and may summon witnesses to testify before it. It can dismiss a frivolous appeal summarily but where an appeal is actually heard, the appellant has a right to be present during the proceedings.⁹⁵

There are certain appeals from the Subordinate Court relating to criminal convictions in which the Supreme Court is the court of first appeal. These include sedition,⁹⁶ unlawful assembly, riot, rioting after or obstructing a proclamation, rioting causing damage to buildings, proposing violence, perjury, fabricating evidence, offences against morality, sending a written threat to murder, robbery, malicious injuries to property, forgery, conspiracy or attempts to commit any of these offences.

High Court

The High Court, created in terms of article 94 of the Constitution and the High Court Act, 1960 (Act 41 of 1960), has unlimited original and appellate jurisdiction to hear any matter, whether civil or criminal, including issues arising from the Constitution. The High Court is presided over by a judge who is a lawyer of at least ten years' standing and considered to be a person of integrity and with a sober and stable character. The High Court currently has 30 judges.

The procedures followed in High Court adjudication is similar to that of the High Court in England, and the rules are set out in the High Court Act and the Criminal Procedure Code. The High Court may hear appeals from the subordinate courts or transfer cases for hearing to such lower courts as it deems fit. Certain issues, such as constitutional claims, election petitions, *habeas corpus* hearings and capital offences such as treason, must commence in the High Court.⁹⁷

Subordinate Court

As the court of first instance the Subordinate Court, which was established in terms of the Subordinate Courts Act, 1933 (Act 33 of 1933), as amended, hears

most civil and criminal cases because its procedure is relatively simple and it can adjudicate matters much more quickly than the High Court. Cases of corruption are thus likely to commence in the Subordinate Court. Indeed, many of the high-profile criminal cases in the news headlines, such as the Chiluba case, are tried in the Subordinate Court.⁹⁸

The court is presided over by magistrates of different ranks or classes. These ranks determine how much power the court has both in terms of the matters it may handle and in terms of the size of claims that it can adjudicate upon. The court has the power to hear a dispute and pronounce a binding ruling or impose a sentence of punishment, as the case may be. The cases handled by the court are largely criminal in nature, and hence at the Lusaka courts five days of the week are devoted to criminal cases. Jurisdiction does not include applications for *habeas corpus*. In determining a dispute, the court may call for evidence and listen to testimony. It has the powers to punish contempt committed in its proceedings but must submit such order to the High Court for review. Thus a magistrate is empowered to commit persons to prison for a period not exceeding seven days, by warrant under his/her hand, who wilfully insult magistrates, clerks/court messengers or any other officers of subordinates during their court attendance, interrupts court proceedings or otherwise misbehave in court. As a rule of law and practice, the Subordinate Court should make monthly returns to the High Court relating to its criminal caseload.⁹⁹

The Subordinate Court has no power to determine issues that must commence in the High Court or Supreme Court. The lowest level of subordinate courts is presided over by Class 3 magistrates, who are not lawyers but have a diploma from the National Institute of Public Administration. Such magistrates can rise to the level of Class 1. However, the fact that a non-lawyer can preside over court proceedings is just as problematic as situations where a junior police officer acts as a prosecutor.

Resident magistrates ranked as Class 1 are lawyers and can rise to the level of senior resident magistrate and judge without any hindrance. Magistrates are appointed by the Judicial Services Commission. Most criminal trials commence in the Subordinate Court but due to lack of capacity, delays are inevitable when they proceed to the High Court for appeal or review.

Most criminal trials commence in a subordinate court and proceed to the High Court on appeal or review.¹⁰⁰ The record of proceedings is prepared at no cost to the accused. Appeals from local courts or cases under review proceed to

subordinate courts. The Criminal Procedure Code regulates procedure in the subordinate courts. Generally proceedings are held in open courts, which enhance transparency. Proceedings are only held in camera if it is deemed necessary in the interests of justice. Proceedings start with a complaint filed with a magistrate or by arrest without warrant, usually by the police. A citizen's arrest may be effected by any person present when the offender commits a recognisable offence in their presence. Once arrested, a person may be issued a police bond and released pending trial or brought to court within 24 hours. In cases of offences which qualify for bail, the offender can take a plea and apply for bail. The bond and bail conditions should not be impossible or prohibitive or beyond the means of the applicant. There are some offences which are non-bailable, such as murder, treason and armed robbery, because they are capital offences. In granting bail, the court takes into consideration the possibility that the accused will attend trial, will not commit further offences, or will not interfere with the witnesses.¹⁰¹

Local courts

Local courts are established in terms of the Local Courts Act, 1966 (Act 20 of 1966), and when it comes to resolving disputes, are the fastest and have the simplest procedures. Since the only law of which the presiding justices have any knowledge is customary law, the local courts are unlikely to handle the trial of specialised offences such as corruption. They would only do so under the supervision of an authorised officer such as the local courts' officer or a magistrate.¹⁰² The rank of the court determines its jurisdiction both geographically and in terms of power to determine particular disputes. Thus the lower ranked courts have too few powers to assume and effectively implement a watchdog role vis-à-vis state violation of human rights.

Court performance

Out of 98 709 offences reported to the police nationwide in 2005, only 38 858 were taken to court. Of these, including those that resulted in a discharge, only 28 845 were concluded. There were 3 603 acquittals and *nolle prosequi*. In total 4 415 were carried over to the next year.¹⁰³ These figures indicate that levels of crime are relatively high for a total population of 12 million, particularly if one takes into consideration that these figures relate only to detected and reported crime. However, it is also a matter for concern that the numbers point to a low

rate of disposal of cases, resulting in a large backlog that increases annually. The legal system in Zambia is limited in its ability to address high crime levels because of inherent structural problems and resource constraints.

Challenges

The poor performance of the courts may be attributed to a number of factors, among them a lack of infrastructure and limited human resources. Phase 1 of the new magistrates' court complex in Lusaka has 12 courtrooms and 12 chambers next to the present offices of the interpreters. The second phase is expected to consist of another 12 courtrooms, with supporting chambers and offices. However, the increased infrastructure will only partly solve the problem of insufficient personnel as there are only 18 magistrates. At present some magistrates are housed in the interpreters' offices.

Apart from Lusaka, there are ongoing projects to build new courtrooms and rehabilitate existing infrastructure. However, the situation is dire as the conditions in Petauke, a rural town in Eastern Province, illustrate. This town has only one magistrate who serves both the Petauke and Nyimba districts as a circuit court. The court spends three weeks in Petauke and travels to Nyimba for one week of every month. The size of his area of jurisdiction means that remand prisoners and suspects in police cells have to wait longer for basic procedures such as bail hearings and trial than should be the case. According to the clerk of the court, this delay has become an entrenched violation of the right to a speedy trial. Furthermore, the magistrate is employed on contract instead of on permanent and pensionable conditions of service.

The worst infrastructure and conditions of service pertain to the local court level. According to an officer of the local court, there are currently 464 local courts serviced by local court justices who have no formal training. These courts handle both civil and minor criminal offences.

Table 8 shows the numbers of criminal cases dealt with by the local courts in relation to civil cases.

Chikwanha¹⁰⁴ questions the guarantee of equal access to justice in Zambia due to a number of concerns:

- The lower court adjudicators who administer customary law pass arbitrary judgments that violate the Penal Code

Table 8 Local court civil and criminal returns, 2001

Province	Civil	Criminal	Total
Central	7 160	450	7 610
Copperbelt	16 098	1 736	17 834
Eastern	9 500	890	10 390
Luapula	5 146	590	5 736
Lusaka	9 745	414	10 159
Northern	9 019	1 037	10 056
North-Western	6 305	810	7 115
Southern	9 751	829	10 580
Western	3 851	187	4 038
Total	76 575	6 943	83 518

Source Judiciary of Zambia, 2001 annual report

- Few defendants have the resources to adequately defend themselves
- Congestion in the courts leads to significant delays in the disposal of cases while accused persons languish in prison
- Magistrates who handle the majority of criminal cases are poorly remunerated and their working conditions are generally poor, leading to some extent to unprofessional conduct on their part
- The courts are perpetually under-resourced and under-funded

Improving court capacity

Recent attempts to lessen the backlog of criminal cases has resulted in the numbers of remandees awaiting trial being reduced from around 2 000 to about 1 000, but this number is still unacceptably high. Since 2002, when the newly elected President Mwanawasa launched his New Deal government with a strong anti-corruption campaign, there has been a substantial increase in the attention accorded to the judiciary and its infrastructure, which has resulted in several improvements.¹⁰⁵ The government allocated funds to courts in Luapula and Southern provinces and received considerable assistance from donors. Norway provided nearly US\$3 million to build the new magistrates' court complex in

Lusaka, while Sweden furnished the buildings at a cost of US\$650 000 and China supplied electric typewriters.¹⁰⁶ The German Technical Cooperation Agency worked with the judiciary, the Zambia Law Development Commission and rural NGOs to improve the legal status of the female population by training local court personnel in legal, procedural and social issues. The aim was to equip local court justices with basic skills necessary to handle cases and limit corruption.¹⁰⁷

LEGAL AID

The Legal Aid Board

The Legal Aid Act, 1967 (Act 30 of 1967) was enacted on 20 November 1967. The objective of the Act is to provide for legal aid in civil and criminal matters and causes to persons with insufficient means to engage legal practitioners to represent them. The directorate of the Legal Aid Board operated as a department within the Ministry of Legal Affairs and consequently enjoyed limited autonomy. However, section 7 A 91 and section 28 of the Legal Aid (Amendment) Act, 2000 (Act 17 of 2000) transformed the legal aid department into a Legal Aid Board. The Legal Aid Board comprises the following part-time members appointed by the Minister in terms of section 7C:

- A person qualified to be a judge of the high court who acts as the chairperson
- A representative of the Law Association of Zambia
- The permanent secretary in the ministry responsible for legal affairs
- A representative of the ministry responsible for home affairs
- The director, who shall be an ex officio member
- A representative of a non-governmental organisation active in the promotion of human rights
- One other person

A further Legal Aid (Amendment) Act, 2005 (Act 19 of 2005) defined the functions of the board as follows:

- To manage and administer the Legal Aid Fund

- To carry out any other activities relating to the provision of legal aid which are necessary or conducive to the performance of its functions under the Act

These functions were limited to the effect that the board would not be responsible for the supervision and administration of the directorate. It is difficult to fathom the intention of the legislature in this respect, because boards of corporate bodies do usually supervise secretariats or directorates. A further amendment was made to legal aid legislation in 2005. In terms of section 3B(1)(e–i) the Legal Aid Board was reconstituted as a body corporate, with perpetual succession and legal capacity to sue and to be sued. The composition of the board was enlarged to include representatives from the ministries responsible for finance and national planning, community development and social welfare, labour, sport and child development (section 3C(1)).

The functions of the board were also reformulated and enlarged:

- To administer and manage the Legal Aid Fund
- To facilitate the representation of persons granted legal aid under the Act
- To assign legal practitioners to persons granted legal aid under the Act
- To advise the minister on policies relating to the provision of legal aid and implement government policies relating to it
- To undertake other activities relating to the provision of legal aid and which are conducive or incidental to the performance of its functions

Although the Legal Aid Board became a body corporate, the link to the Ministry of Justice remained. The ministry still recruits, disciplines and determines the conditions of service for legal aid personnel and is also still responsible for mobilising and disbursing resources to the board. However, it is important that the board and the ministry be separated, because if it were independent, it would be able to plan effectively for expansion, hiring and retention of staff as well as mobilisation of resources from either the government or partners. The formality surrounding the Legal Aid Board still makes it difficult for the ordinary person to approach the board.

The Legal Aid Board has offices in Lusaka, Kitwe, Ndola, Kabwe and Livingstone. It employs 21 lawyers out of the desired total of 34. The lawyers acting for the board have heavy caseloads and have to cope with a critical

shortage of staff and inadequate transport. As a result operations tend to suffer and the board tends to limit the granting of legal aid to accused persons facing serious criminal cases, mostly in the high court. The board therefore handles a limited number of civil cases.

The woes of the board are aggravated by the fact that as a result of the poor conditions of service, it is unable to attract and retain lawyers. The result of the administrative and logistical problems is that indigent persons, especially in rural areas, are denied recourse to legal aid.

Non-governmental organisations and pro bono services

The paralegal programme of the Catholic Commission for Justice and Peace was set up as a response to the need for the communities to know, understand and protect their rights. The programme is driven by the aim of contributing to the rule of law through increased access to legal information and support, especially with regard to the poor. It tries to achieve this by offering quality legal advice by justice and peace members who are trained under the programme. The programme is undertaken in association with the University of Zambia School of Law. Programme participants are also expected to learn from law officials such as the police, judges, magistrates, and members of the Anti-Corruption Commission and the Human Rights Commission.

In order to alleviate the prohibitive costs of legal services and generally improve access to justice for the poor, various NGOs have been formed that provide pro bono or free legal services. The principal organisations are the National Legal Aid Clinic for Women (NLACW) and the LRF. The NLACW was established in 1990 as a project under the Women's Rights Committee of the Law Association of Zambia. The latter is a professional organisation for lawyers in Zambia. The mandate of the Law Association of Zambia includes the development of law as an instrument of social order and justice. In addition, lawyers are encouraged as individuals to identify themselves with the people and use their skills in the development of society and its institutions.¹⁰⁸ The NLACW was established to provide affordable legal aid to women and children from marginalised social sectors, mainly those who would not usually be able to afford to hire a legal practitioner to represent them.

The NLACW has offices in Lusaka, Livingstone and Ndola. It currently employs only six lawyers. The capacity of the NLACW to provide significant

relief to the poor is limited as it is donor dependent and lacks the logistical support to meet the challenges of providing legal services to the poor. If the NLACW received the necessary support in the form of more resources to enable it to recruit and retain a larger team of lawyers to serve rural and urban poor women, they would be able to carry out their tasks more effectively. The establishment of strong linkages countrywide would allow them to utilise the small claims court concept and operate from buildings belonging to other institutions. They also need materials such as networked computers, motor vehicles and mobile office facilities. Owing to the nature of the cases handled by the NLACW, support in the form of provision of social workers to take care of the needs of the poor women would be an additional advantage. Expansion of the activities and infrastructure of the NLACW to rural and urban areas would be a critical step in increasing access to justice for the majority of poor and vulnerable women.

The Legal Resources Foundation is an indigenous NGO established in 1991 to promote and protect human rights, principally through the provision of legal aid services to the poor.¹⁰⁹ The organisation has pioneered community-based legal advice centres and a prisons legal assistance project that targets prisoners, prohibited immigrants and refugees. The primary aim of the LRF is to supplement the chronically understaffed Legal Aid Board with regard to the provision of legal services to the poor. Although the LRF runs a legal aid programme, it too suffers from a myriad of problems. First, it has a high turnover of lawyers as a result of the poor conditions of service offered to its staff. Second, it operates from rented premises that cannot be converted to suit the needs of themselves and their clients and there is also the potential risk that they need to change offices if the relationship with the owner of the building deteriorates or the rental is increased. This constant change of rented premises could affect the access of the general public to the LRF. Third, it has a poorly stocked legal library, which makes research very difficult. Finally, it has inadequate transport to meet the challenges of providing legal aid across the country.

During a conference hosted by the Zambia Association for Women Judges, the structural problems faced by the judiciary came under the spotlight. The conference participants concluded that Zambian courts have to apply archaic laws, are bogged down by a backlog of cases and are mired in chaos arising from poor security and record-keeping. Not only is there a formal legal system, but also a common law system. The review of the country's Constitution, which

was amended in 1996, is expected to outline changes in governance and legal and judicial issues that should alleviate the situation.

THE JUDICIARY

Legal framework

The United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1985) adopted the basic principles on the independence of the judiciary. In terms of these principles:

- The state must guarantee the independence of the judiciary and enshrine this independence in the Constitution
- The judiciary must enjoy administrative independence to ensure its autonomy
- The judiciary must have sufficient funds to enable it to perform its function efficiently. This necessitates that the judiciary should participate in the preparation of its budget and the appropriation of resources
- The judiciary's decisions – its judicial authority – must be respected and complied with. There should be a power of judicial review of executive decisions
- Judges need to be independent to ensure that they are able to act without fear of criticism or reprisals, especially in sensitive cases

The concepts of independence and impartiality are closely linked but distinct. The judiciary needs to be independent at both the individual and institutional levels. It can be regarded both as a state of mind and a relationship with others. In the case of the judiciary this relationship is mainly with the executive branch of government; it rests on objective conditions or guarantees. Impartiality, on the other hand, is the state of mind or attitude of a court in relation to the issues or parties before it in a particular case. Here it is important that a court not only be impartial but is seen to be so.¹¹⁰

The judiciary was established under Part VI of the Constitution. This part is not entrenched in the Constitution, but can be amended by Parliament. Article 91(2) of the Constitution states that judges, magistrates, and justices of the different courts shall be independent and impartial and subject only to the

Constitution of Zambia and the law. By virtue of the Judicature Administration Act, 1994 (Act 42 of 1994) the judicature is autonomous and administered in accordance with the law, and judges must conduct themselves in accordance with a code of conduct promulgated by Parliament.¹¹¹

The court's independence is secured through an objective process of appointment and terms of tenure of office. Independence of the judiciary is based on three requirements: appointment procedures, conditions of service, and termination of employment. The provisions in the Constitution of Zambia and specific Acts of Parliament provide for the appointment of judges based on these principles.

A judge is appointed on the basis of two criteria, namely integrity and professional competence. With regard to conditions of service, the law provides security of tenure until the mandatory age of retirement as well as adequate remuneration. Promotion should be based on objective factors. Judges cannot be sued for official actions and decisions. Although judges are accountable for their professional conduct, such accountability should be enforced by an independent tribunal. The judge is entitled to a fair hearing following established judicial procedure and may be removed only for an inability to perform his functions. Again, such a decision is subject to an independent review. The court, and the judge, in turn must ensure that the parties before it receive a fair and impartial hearing that will be concluded with a reasoned decision.

Significant differences exist between the appointment process, security of tenure and conditions of service of judges and members of the lower bench. The Constitution provides for the appointment procedure of judges and involves two branches of government in that appointments are made by the executive and ratified by Parliament. However, members of the lower bench are appointed by the Judicial Services Commission.

Accountability

The behaviour of adjudicators is regulated by the Judicial Code of Conduct Act, 1999 (Act 13 of 1999). The Act created the Judicial Complaints Authority, which oversees the conduct of adjudicating personnel and regulates the ethical conduct of officers of the judicature. A 'judicial officer' is defined as the chief justice, the deputy chief justice, a judge, a chairman, deputy chairman, registrar, magistrate, justice of a court, or other person having power to hold or exercise the judicial powers of a court. The Act contains two key provisions:

- Section 5(2) provides that a judicial officer shall not, in the performance of adjudicative duties, be influenced by partisan interests, public clamour or fear of criticism, or by family, personal, social, political or other interests
- Section 5(3) provides that judicial officers shall not use the office or their position to advance any private interests of themselves or their immediate family

The Judicial Complaints Authority is constituted of a complaints committee of five persons who have held or are qualified to hold a high judicial office and have been appointed by the President, subject to ratification by the National Assembly. The committee's functions are to receive and investigate any complaint or allegation of misconduct made against a judicial officer and to submit its findings and recommendations to the appropriate authority for disciplinary or other administrative action. It may also submit its findings and recommendations to the Director of Public Prosecutions for consideration of possible criminal prosecution. Section 25 of the Act provides that any member of the public who has a complaint against a judicial officer or who alleges or has reasonable grounds to believe that a judicial officer has contravened the Act must inform the committee accordingly. The same duty to report to the committee falls on a judicial officer who alleges or has reasonable grounds to believe that any other officer has contravened the Act. The complaints procedure and subsequent investigations are wholly confidential and not open to public scrutiny.

The fact that the Act does not cover court officials such as the chief administrator and other senior professional and administrative staff is considered to be one of its major weaknesses. The fact that the complaints procedure is confidential and proceedings are held in camera has also attracted criticism on the grounds that it lacks transparency. However, the procedure is defended on the grounds that it is necessary to uphold the dignity of the office of judicial officers and preserve the integrity of the judiciary as a whole.

Funding

In a bid to strengthen the autonomy and therefore the independence of the judiciary, the Judicature Administration Act, 1994 (Act 42 of 1994) was passed. The Act provides for the separate administration of the courts from

the Ministry of Legal Affairs and gives the Judicial Service Commission the power to appoint staff of the judicature. The judicature absorbed the existing staff of the judiciary and continued to receive government funding through the Ministry of Justice. The administration of the judicature is headed by a chief administrator appointed by the President on the recommendation of the Judicial Services Commission. He is regarded as the officer who controls the expenditure of the judicature and therefore has a standing similar to that of a permanent secretary.

The funds of the judicature consist of monies appropriated by Parliament for the purposes of the judicature, and grants and payments in the form of court fees and fines paid to the judicature. The Chief Administrator may accept grants whether they are subject to conditions for the benefit of any activity, function, fund or asset of the judicature or not. The judicature has thus been funded substantially by donors both in terms of capital projects and day-to-day programmes. NORAD is for example currently funding the construction of a subordinate court complex in the vicinity of Lusaka Central Prison. The government, too, has funded a number of ongoing projects regarding the construction of new court buildings and rehabilitation of existing infrastructure.¹¹²

The judicature also raises its own funds from court fees. Forty per cent of the fees is retained in the stations and 60 per cent is remitted to headquarters. These funds are deducted from the total appropriations for the judiciary and used for recurrent expenditure. Monies raised from court fines are more substantial than fees but are remitted to the Central Treasury. Judiciary appropriations are applied to personal emoluments and allowances for the members of the judicature. Judges' salaries are drawn directly from the Treasury in accordance with the Constitutional Offices Emoluments Act, 2005 (Act 14 of 2005). Members of the judiciary can take out loans. The judicature's accounts are subject to audit by the Auditor General. Despite its new autonomy and improvement in the salaries of judges, salaries of magistrates and court justices remain unsatisfactory and this has contributed to allegations of corruption against adjudicators, even at the highest level.¹¹³

Not later than six months after the end of the financial year, the judicature must provide a financial report incorporating audited accounts to the President, who presents it to Parliament. The government retains ultimate responsibility for providing, equipping and maintaining courthouses, offices, judges' residences and other buildings.

Gender composition

There are considerably fewer female adjudicators than males in Zambia. According to a study conducted by WLSA¹¹⁴ in 1999 there were only six female local court justices out of a total of 299; 23 female magistrates out of a total of 106; and three female judges out of a total of 19.

Independence of the judiciary

On the whole the courts appear to deliver more progressive judgments when watchdog institutions such as the Parliament are more proactive and when the executive appears to support the rule of law. This perception is borne out by a comparative review of cases determined during the one-party state era (1970s and 1980s) and the multiparty eras of Chiluba (1990s) and Mwanawasa (2001-2008).

During the one-party era there was a proliferation of *habeas corpus* cases as numerous people were detained indefinitely under a purported state of emergency.¹¹⁵ Many of the *habeas corpus* pleas, such as *Chisata Lombe v Attorney-General* (1981) ZR 35; *Kawimbe v Attorney General* (1974) ZR 244; and *Mario Malyo v Attorney-General* (1988-89) ZR 36, were rejected by the courts in what were clearly judgments partial to the government.

This is illustrated clearly in the case of *In Re Kapwepwe and Kaenga* ZR 49. This was a case of two applications for a writ of *habeas corpus ad subjiciendum*. The applicants, who were members of an opposition party, were detained under Regulation 33 of the Preservation of Public Security Regulations. Section 26A(i) (a) of the Constitution required that such persons be furnished with a written statement specifying in detail the grounds upon which they are detained.

The statement in respect of Simon Kapwepwe alleged that during December 1971 and January and February 1972, he and other members of the United Progressive Party conspired to engage in activities to endanger the safety of persons and property, as a result of which 18 persons were assaulted and threatened with death and the properties of 23 persons were damaged or destroyed. During those months he allegedly conspired to defy and disobey the law and lawful authority and to spread by word of mouth and publish by way of circulars statements defamatory and contemptuous of the head of state and government. The first contention of the applicants was that they were unable, because of the

lack of detail, to make any or a sufficient representation regarding their detention. The second contention was that the discretion of the President to detain them was improperly exercised and not entirely in good faith. The high court held that grounds are simply reasons what must be provided for the exercise of the executive's discretion to detain, and not statements of the material facts on which reliance is made. It further held that there was no evidence to show that the President was acting other than in good faith.

The 1990s and the return to multiparty politics saw more complex cases but also clearer ambiguity in the court's relationship with the executive, as the following cases illustrate.

In *The People v Fred Mmembe and Others* (HP/38/1996) the editors of *The Post* newspaper were charged with receiving information in contravention of the State Security Act. The court found for the accused on the grounds that the information that was published did not impinge on public security. In the landmark case of *The People v Christine Mulundika and Others* ZR 239, the Supreme Court overruled the High Court, holding that the Act gave too much discretionary power to the executive in the award of permits under the Public Order Act.¹¹⁶ The court stated that such legislation creates a prior restriction on the freedom of the citizen to form or hold a meeting or procession and in terms of article 21(d) also to demonstrate in a public place. (A prior restraint is an injunction prohibiting the freedom of assembly, procession or demonstration. Whether such injunctions or prohibitions imposed by statutes may be restricted by law on the grounds stated in the Constitution can be debated but they cannot be denied.)

In March 2000, Mr Mmembe and *The Post* were again on trial for espionage. This time they were accused of spying on behalf of Angola after *The Post* published an article comparing the military standing of Zambia and Angola. The presiding judge ruled that mere publication did not prove either prejudice to Zambia or establish the offence of espionage.

These decisions are far from decisions in the 1980s and early 1990s which avoided any contradiction with state policy or the possible undermining of executive licence and powers. However, many people viewed the court decisions as fairly radical because the fact that the trials arose at all was evidence that multiparty rule had not erased authoritarian tendencies in the state apparatus. Democracy did not prevent the state from continuing to employ repressive laws in order to control dissent. In fact, some argue that the judgments set in motion a deliberate government strategy to undermine or corrupt the judiciary.¹¹⁷

The state reacted negatively to the two judgments. The Chiluba government openly criticised the Mulundika judgment in particular and threatened to circumvent it through statutory enactments. In 1996 the MMD-dominated Parliament passed, in record time, a Bill amending the Public Order Act, 1955 (Act 38 of 1955) to limit discretion but at the same time imposed a requirement for a notice period prior to any public assembly. In fact, only public outrage stopped the government from pushing through a constitutional amendment at the same time, giving the President broad powers to remove a sitting justice.¹¹⁸

Another aspect that deserves mention is the untimely departure of no fewer than three of Zambia's former chief justices. During the one-party state period, two chief justices were removed for actions perceived to be partial, either for or against the state. In the first case, Chief Justice Skinner was removed by President Kaunda for releasing two Portuguese nationals who were charged with espionage. The release was allegedly prompted by the fact that the accused persons were white and the decision to remove Mr Skinner was widely supported by the public. Chief Justice Silungwe on the other hand was forced to resign after public demonstrations were held against him following his delivery of a Supreme Court judgment acquitting President Kaunda's son, Kambarage, on a charge of murdering a young woman. The third case occurred much later and brings a different dimension to the relationship between the executive and the chief justice. Chief Justice Ngulube was forced to take early retirement in 2002 after sensational revelations by *The Post* that he had received some under-the-counter payments from President Chiluba.¹¹⁹

In a country where the independence of the judiciary is a relatively recent event that needs to be strengthened, sentencing guidelines can assist in promoting transparency and introducing consistency. The extent to which sentences are becoming harsher is a good indicator of the approach to criminal justice.

Training

Most local court officers are drawn from among retired civil servants and serve three-year contracts, making impartiality problematic. Even at lower court level there are very few professional magistrates who are trained as lawyers. The majority are lay magistrates trained at the National Institute for Public Administration.

Chikwanha¹²⁰ questions whether equal access to justice can be guaranteed in Zambia. Her concern can be attributed to a number of concerns about the staffing of courts, specifically with reference to the poor qualifications of persons manning the lower courts and the absence of lawyers, which compromise the quality of justice dispensed to citizens who rely on these facilities.

JUVENILE JUSTICE

Juvenile justice in Zambia is governed by the Juvenile Act. The Act was promulgated in 1956 (Act 4 of 1956) and was amended frequently, most drastically in 1964 and 1969. Because children are mentioned in a number of other acts, too, there are a wide range of definitions of the child, which causes major problems. Furthermore, the definition of a child varies depending on the context and piece of legislation and the minimum ages for various actions are set in terms of different laws. In addition, very often the legislation also refers to the ‘apparent age’ of the child,¹²¹ which lays it open to potential abuse and discrimination if the law is misapplied.

The term ‘juvenile’ includes a ‘child’ – a person who has not attained the age of 16 – and a ‘young person’ – a person between the ages of 16 and 19.¹²² The Juvenile Act refers to persons below the age of 19.¹²³ However, with regard to protection of young persons from exploitation, a ‘young person’ is any person below the age of 15 years, but with regard to marriage, any person below 21 years requires written consent of a parent or guardian. (Matters are further confused by customary law, where still different age norms apply and written consent is not required, and a marriage may for example be contracted once a child has attained puberty.) On the other hand, the Penal Code sets the minimum age for full criminal responsibility at 18 years but when customary law is applied, the criterion may be the attainment of puberty.¹²⁴

Muntigh observes that child justice in Zambia is essentially influenced by five key constraints:

- Severe resource constraints at all levels of the system
- Antiquated legislation regulating juvenile offenders (the original Act was enacted in 1956) based on an approach to juvenile offences prevailing in Britain in the 1930s

- Justice officials who are not trained to deal with children in conflict with the law and a lack of expressed recognition of children's rights in the criminal justice system
- A high turnover and constant transfer of police officers, prosecutors, magistrates and probation officers who receive training in juvenile justice, thus undermining investment in training
- No budgetary allocation expressly for juvenile justice administration

Children thus remain vulnerable in the criminal justice system and given the large numbers of street children and those orphaned by the AIDS pandemic, many injustices are likely to go unreported since no adults follow up on the welfare of these children. A large part of the problem is that the attention that has been given to child justice since 2000 has been almost exclusively donor driven. Despite the training and research that have been undertaken as well as some significant, though small, advances that have been made, the government has not taken the initiative in enhancing the security of children in justice delivery. This position was confirmed by the Permanent Secretary for Home Affairs, who explained that there is no specific budget line allocation for child justice, nor has government identified it as a priority area.¹²⁵ According to a 2005 United Nations Children's Fund (UNICEF) report children are essentially treated as 'small adults' in the criminal justice system.

The following case illustrates some of the injustices juvenile offenders experience:

The child was convicted on 6 June 2004 at the age of 15 years for defilement and received a sentence of 21 years. He knew the victim, who was a neighbour and roughly the same age as himself. Both his parents had passed away, his father when he was aged 10, and his mother a year later. After that, he stayed with an aunt until he was arrested. He is illiterate and attended school until Grade 4. At the trial in the subordinate court, he pleaded guilty but was never assessed or interviewed by a social welfare officer and a report on his personal circumstances was apparently not submitted. The magistrate felt that the subordinate court did not have sufficient jurisdiction for sentence and referred the case to the high court for sentence. The boy explained that he was sitting in prison when he was informed that he had received a sentence of 21 years' imprisonment.¹²⁶

Juvenile justice legal framework

The fragmented legal framework complicates the delivery of justice to juveniles. The numerous laws relating to children are scattered among different statutes.¹²⁷ Many of children's basic rights (such as the right to citizenship, protection from exploitation, the right to life of an unborn child and the right to personal liberty of a minor) are all entrenched in the Constitution. The provisions related to criminal matters are embedded in the Juvenile Act, the Penal Code, and the Criminal Procedure Amendment Code. The dispositions regarding civil matters can be found in the Intestate Succession Act, the Widows and Orphans Pensions Act, the Affiliation and Maintenance Act, the Adoption Act and the Employment of Young Persons and Children Act. In addition to constitutional and statutory legislation, customary law also regulates matters concerning children. In Zambia, local courts employ the principles of customary law and have substantial power to invoke customary law, including Penal Code 17.

In the same fragmented manner, the legislation on children is implemented through various programmes: the National Plan of Action to Eradicate Child Labour, the Victim Support Unit, the Child Justice Forum, the National Youth Policy and the National Child Policy. Likewise, different ministries share the responsibility for the welfare of children but not necessarily in a coordinated manner. The Ministry of Sport, Youth and Child Development, the Ministry of Community Development and Social Services, the Ministry of Labour and Social Security and the Ministry of Education are all involved.

The government, through the Ministry of Community Development and Social Services, has embarked on a law reform process to comprehensively review various pieces of child-related legislation in order to harmonise them and to bring them in line with the general principles of the United Nations Convention on the Rights of the Child (UNCRC). One of their recommendations is that the government should set up a national child council whose key mandate should be to coordinate the implementation of the UNCRC in the country. However, the process is slow and has on occasion stalled and there is still a lack of clarity regarding the process and the mandate of the Ministry to review all child-related legislation.¹²⁸ Part of the problem is that although there is now a new national child policy (2006) that has taken into account the worsening situation of orphaned and vulnerable children in the country, there is still no national plan of action to translate the policy into programmes.

Furthermore, the Child Rights Committee that was formed under the Human Rights Commission to strengthen the monitoring and implementation of the UNCRC has not performed according to expectations because of inadequate resources and manpower.

Police stations visited by Muntingh in 2005 (in Lusaka: Lusaka Central, Kabwata and Matero; in Ndola: Ndola Central, Masala and Kanshenshi; in Kitwe: Kitwe Central, Mindola and Wusakile; Choma in Choma and Central in Livingstone) revealed that with the exception of Matero, Lusaka Central and Ndola Central, children were not separated from adults while detained at police stations prior to court appearances even though all police personnel were aware that this was a legal requirement. In most cases there was no cell space available at the police stations to make this possible. Accordingly detained juveniles experience the same hardships as adults. There is no special provision which regulates the procedure of arrest when it comes to children, therefore the ordinary rule in section 33.1 of the Criminal Procedure Code applies, which requires a limit of 24 hours before appearance before a magistrate.

Although section 66(4)(a) of the Juvenile Act requires that a juvenile appears at least every 21 days before the court to extend the warrant for his/her detention, this does not happen in practice. In Mukobeko a 17-year-old boy (charged with burglary and theft) had been in custody for 21 months but had appeared in court only twice. At the same prison another boy aged 16 years who had been charged with assault had appeared in court once since his arrest seven months earlier. At Ndola Remand Prison a boy aged 13 years who had been charged with 'espionage' had been in custody since January 2001.¹²⁹ In short, at all the remand prisons visited children were found to have been held for excessively long periods and in violation of the provisions of the Juvenile Act, rendering their detention illegal. The charges against the children also require further scrutiny.

Sections 58 to 60 of the Juvenile Act provide the following basic requirements with regard to the arrest and detention of a child or young person: detention should be avoided and if detention cannot be avoided, children must be kept separate from adults, and girls must be placed in the care of a female officer. The child should as far as possible be kept in a place of safety and the officer in charge of the police station must show to the court why detention is required and why the child could not have been released on his own recognisance or a police bond.

In most provinces the handling of juveniles in trouble with the law are problematic. In some cases the arrest of children are recorded in a general occurrence book with adult arrests and are not readily identifiable from records. Sometimes they are distinguished only by 'J/F' or 'J/M' for juvenile female or juvenile male. Only in Lusaka Central and Matero are their cases handled in accordance with the legal requirements.¹³⁰

Juvenile crimes

Children are arrested for 'consensual crimes' such as smoking dagga and inhaling solvents. The criminalisation of substance abuse by children, triggering a criminal justice response to a child care problem, is clearly inappropriate. It would be more appropriate for the police to refer these matters to the Drug Enforcement Commission than to arrest the children.

In August 2005, out of 14 427 prisoners in Zambia, 79 were convicted juveniles and 230 juveniles were in remand. In 2005, juveniles were detained in the following prisons:

- Mukobeko Maximum Security Prison – male section
- Mukobeko Maximum Security Prison – female section (seven children kept with mothers)
- Ndola Remand Prison (63 juveniles)
- Kafinsa Remand Prison
- Katombora Reformatory School
- Lusaka Central Remand Prison
- Kabwe Medium Security Prison: in 2005, 25 juveniles had been awaiting trial since 2002 (most of them had not appeared in court for several years. There were a total of 29 inmates in the juvenile section, who were apparently detained in better conditions)
- Mumbwa State Prison: One female detainee had a three-year-old old baby. One juvenile, aged 16 years, was detained with the adults
- At Serenje State Prison juveniles were detained with adults¹³¹

The subordinate court can constitute itself into a juvenile court in order to try a juvenile offender. Pre-trial detention is discouraged for fear of contaminating the juvenile. The trial is closed to the public and the juvenile's guardian is

expected to be in attendance. The types of order that the court can make include an absolute or conditional discharge, probation, an approved school order, a reformatory order, corporal punishment, payment of a fine, damages or costs, or imprisonment if he/she is 16 years of age or older. Imprisonment is a last resort, in which case a juvenile is sent to Katombora Reformatory in the Kazungula district. Corporal punishment has been outlawed by the courts as inhumane and degrading punishment.¹³²

Zambia has ratified the United Nations Convention on the Rights of the Child, although its provisions have not been domesticated. This means that the Juvenile Act must be reviewed and modernised. The main focus of juvenile justice should be rehabilitation as opposed to punishment. The Constitution should also provide special protection for juveniles. Apart from such special constitutional protection for juveniles, there is equal need to domesticate international instruments governing juvenile justice. These include the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

However, UNICEF, in collaboration with the Judicial Commission, has been working with the Human Rights Intellectual Property and Development Trust to finalise a manual for child justice role-players. The manual will be used to train 105 magistrates and other role-players in the administration of child justice. There is wide recognition that this is a key ingredient in the expansion of child justice in the country. UNICEF has also been working closely with the Permanent Human Rights Commission to organise a human rights training programme for parliamentarians whose oversight is essential to ensure the protection and realisation of children's rights.¹³³

The result has been some progress regarding reforming child justice delivery in the country. UNICEF's Child Protection Unit attempted to control and stabilise the child justice reform process in the country by the provision of technical, capacity-building and financial support. These efforts resulted in the establishment of child friendly courts and arrest reception and referral services (ARRS). The aim was to centralise all efforts to address the problem of children who had to be dealt with within the justice process as a whole. The aim of the ARRS was specifically to ensure that children were separated from adult criminals as well as to ensure that their access to justice was

speeded up. This was a major achievement in the recognition of children's rights in the country. Support from the Victim Support Unit heightened awareness and also brought about collaboration amongst service providers of children in distress such as social workers. However, child justice suffered a major setback in 2004 when the centralised efforts at delivering justice to children were decentralised to all courts. This occurred despite the fact that resources had been poured into the two courts, namely Chikwa and Boma, and their capacity for dealing specifically with children had been built up over a long period.

Furthermore, the increased knowledge and awareness amongst police officers about children's rights has not translated into better service delivery. There is still no act to prohibit corporal punishment in all settings and children still receive humiliating and demeaning punishment. The removal of statutes providing for corporal punishment as a result of a 1999 high court ruling in *Banda v The People* ZR 269 has not been followed up with express prohibition of corporal punishment in all settings. The government has not demonstrated a willingness to reinforce public awareness on other non-violent forms of disciplining children, either. Children interviewed in Lusaka continue to report assaults during arrest and questioning, as well as lengthy periods in remand. According to a study commissioned by UNICEF, 60 per cent of interviewed children awaiting trial in remand prisons reported that they had been assaulted by the police during arrest and questioning. This included explicit torture for the extraction of information, using handcuffs, pieces of hosepipe to flog the child and a whip. In one extreme case, Amnesty International reported that six youths who had been detained by police on suspicion of murder had been tortured with a sledgehammer and plastic whips while being suspended upside down from a metal bar. All six were later released without being charged.

Some innovative measures have been put in place to improve the juvenile justice system, namely the ARRS, the Child Friendly Court (CFC) and the Diversion Programme. Each of these projects is discussed briefly below.

The Arrest, Reception and Referral Service

The objective of the Arrest, Reception and Referral Service (ARRS) is to centralise the arrest of children at designated police stations in Lusaka, the

capital of Zambia. The centralisation of arrest serves several purposes. First, the ARRS enable children to be held in child friendly facilities, and access professional services. Second, the centralisation of arrest makes more accurate monitoring possible and prevents children from being neglected in outlying police stations. Third, the ARRS makes it possible to detain juveniles separately from adults. Fourth, the ARRS ensures that juveniles are brought before the courts of law within a reasonable time. Three police stations have been designated for this purpose, namely Lusaka Central, Matero and Simon Mwansa Kapwepwe. It is noteworthy that the Lusaka Central and Simon Mwansa Kapwepwe police stations have separate cells for males, females and juveniles. The three stations are also stocked with mattresses and blankets donated by UNICEF.

As far as administration of juvenile justice law is concerned, police officers are required to contact guardian(s), parent(s) and/or a social worker when arresting a juvenile. The involvement of social workers is important because they assist police officers with locating the parent(s) or guardian(s) as well as preparing the juvenile for the court appearance. It can thus be concluded that the ARRS fosters intersectoral cooperation and increased awareness and knowledge of juvenile rights in Lusaka.

The Child Friendly Court

The Child Friendly Court (CFC) was first established at Chikwa Court in Lusaka and later moved to Boma Court in Lusaka. It is now located at the new magistrates' court complex in Lusaka.

The primary objective of the CFC is to ensure that all cases involving juveniles are dealt with by a specialised court. Thus the CFC is staffed with a specialised magistrate prosecutor and a probation officer. The trials of juveniles are conducted in a separate courtroom and in a manner that takes into account the age of the juvenile. The language used in court is adapted to the needs of the juvenile. The court tries to minimise delays in the disposal of cases and to avoid remanding of juveniles. In Lusaka five magistrates sit on a designated day to determine matters relating to juveniles. A trained probation officer and prosecutor are assigned to each court. When a juvenile is taken to court for a minor offence, the magistrate obtains a social welfare report and can issue a court order directing the juvenile to a diversion option.

The Diversion Programme

The Diversion Programme was introduced by a NGO called Rural Youth and Children in Need, which is housed by the Ministry of Sport, Youth and Child Development in the Kalingalinga Youth Centre in Lusaka. The concept was borrowed from South Africa and the idea behind the concept is that an offender can be diverted from the criminal justice system, with its negative effects, to a more edifying alternative. Thus instead of imprisonment, juveniles are exposed to a programme aimed at educating and changing their views to prevent them from relapsing into crime.

Rehabilitation and reintegration are key components of the programme. A diversion programme questions why one should return to the old lifestyle and provides alternative thinking and gives new aims in life. The community plays a key role in the programme. If a juvenile is placed on a diversion programme, he or she must have a place in a family or community to which he or she can belong and attend the particular diversion programme. This is in fact one of the conditions that needs to be fulfilled before the court will place a juvenile on such a diversion programme.

ACCESS TO JUSTICE

It is one thing to advocate and champion the rule of law, and another thing altogether to make that law, and make it accessible to the people.¹³⁴ A field survey was conducted during this review with about 20 organisations and individual respondents involved in development work related to access to justice. Results of the survey indicate that more than 67 per cent of the mixed group of respondents who were interviewed using semi-structured interviews and questionnaires felt that there was moderate access to justice while 25 per cent said there was no justice for the poor. Only 7 per cent of the respondents said that there was access to justice for all categories of people. It was observed that this view mostly came from representatives of institutions whose aim is to ensure that such access to justice occurs.

Although the situation with regard to access to justice may seem positive on paper, the majority of the respondents indicated that it was difficult to access justice because of a number of limitations and barriers. Poverty among the poor and existing institutional arrangements were cited as the major barriers to

accessing justice, as discussed in detail in the later sections of this report. Table 9 highlights the perceived causes of limited access to justice.

Awareness levels

Evidence at grassroots level indicates very low awareness levels about the availability of formal justice mechanisms among the poor and women.¹³⁵ Knowledge is power, which means that if there are low levels of awareness among the general public of the mechanisms of justice available to them, then the right to justice is as good as denied. Paradoxically, the laws of the land are for general application and yet the public is largely ignorant about the existence of the laws and their content. This situation is exacerbated by the often quoted maxim that ignorance of the law is no defence.

The study reveals that people in peri-urban and rural areas were more aware of the informal mechanisms of settling disputes. For example, in the Chipata peri-urban compound both women and poor men said that they used religious institutions, their family members and an informal gender court in their community to settle various types of disputes. Apart from

Table 9 Perceived causes of limited access to justice

■ Cases not expedited/a high rate of law violations
■ Courts are slow, legal aid department are understaffed
■ Few justices/accused detained for long periods without trial partly due to lack of understanding of legal rights
■ High legal fees/legal aid systems not available in outlying areas
■ Some individuals facing criminal charges bribe officials to get out and officials are accused of deliberately delaying charges in order to get bribes
■ Not all cases are reported
■ Distance, cost or a lack of legal aid
■ Some cases take too long
■ There is a high level of corruption
■ Justice structures are concentrated in towns
■ People living in remote areas do not know how to access justice

these mechanisms, interviewees said that they have utilised the local courts a number of times. None of them mentioned other courts. In rural areas, traditional courts such as the KUTA in Western Province are mostly used. The Zambian government recognises the role of chiefs through an Act of Parliament.

One key finding that emerged from the study was that people, especially the poor, tend to feel comfortable with the types of dispute resolution mechanisms they were used to and are intimidated by the thought of going to a formal court. The added advantage to this group was that these informal mechanisms rarely require them to travel beyond their own residential areas. Although most agreed that a court had to be used to settle a dispute, they categorically stated that they preferred to use family, community and church members as a first means of resolving disputes. Because the poor know how the informal system works and the vernacular of the people is used, they are more comfortable utilising informal mechanisms than other instruments.

Low awareness levels of available services can also be attributed to factors such as geographical location away from formal justice centres, limited access to media and media awareness programmes, clauses in the law that prevent legal and paralegal institutions from advertising their services, low literacy levels (especially among women), use of technical jargon in published documentation, and lack of information translated into local languages.

There are a few institutions in the legal field that do work outside the major urban centres in some of the provinces. Apart from some government, non-governmental or paralegal institutions, religious institutions also help to promote justice by handling disputes from a religious perspective. For example, the Catholic Commission for Justice Development and Peace, the Young Women's Christian Association and others work to address social, economic and even legal justice issues at the grassroots level.

Legal costs

A distinction needs to be drawn between court fees and legal practitioners' fees. In general, court fees are not a barrier to access. For example, court fees for filing an affidavit at Supreme Court and High Court level are K14 000 and K5 000 respectively. An affidavit filed at an industrial court costs K20 000 and at a local court the fee is only K20.

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 simply unable to afford legal practitioners to represent them in courts.

Paralegal services

Many poor people are unable to seek the services of legal practitioners because of the 'exorbitant' legal fees charged by legal practitioners. Perhaps because of this, many interviewees identified the need for paralegal personnel to assist them in resolving their legal problems. The Legal Resources Foundation was singled out as an institution that has been effective in providing legal services free of charge to the poor. On the whole, however, there is limited access to the services provided by paralegal personnel. Only a few institutions provide paralegal services, and those that do offer such services are restricted to a few districts and provincial capitals.

Language and court procedures

Although the language and procedures followed in the subordinate courts as well as in the High and Supreme Court are formal, the language barrier is mitigated by the availability of language interpreters. The problem with using a translator is that evidence provided by an accused person or a witness may be distorted. The rigid and formal court procedures may make the court situation extremely intimidating to the uninitiated. The authority of judicial officers is viewed with awe. As a result, it is not surprising that the majority of the poor prefer the local courts where they are able to express themselves more freely and in their own language. The procedures in the local courts are informal and legal practitioners are not permitted to represent a party or parties before the court.

Limited infrastructure

One of the most critical elements in ensuring access to justice is the availability of infrastructure for people who seek the intervention of the courts. The number of courts available in the country is a limiting factor in accessing justice. Even where these courts exist, the condition of some is unsatisfactory. The government has embarked on a programme to rehabilitate infrastructure

housing courts, but access to justice will not be guaranteed unless a flexible and more innovative approach is adopted in the provision of court rooms. As was shown in this study, there are more local courts than formal ones in the rural areas (partly of course because supreme and high courts are situated in urban centres). This finding does to some extent explain why local courts are used so extensively in the countryside, but it does also highlight that there is a need to improve the operations and facilities of these courts, too.¹³⁶

Delays in court proceedings

The delays in disposing of cases discourage ordinary citizens from making use of courts of law. The time it takes for cases to be heard and disposed of by the courts is of major concern. A major source of delays in disposal of cases is adjournments at the instance of either legal practitioners or the courts. Bearing in mind the high poverty levels in Zambia, any delay in court proceedings could translate into excessive legal costs, which further inhibit access to justice for all.

PUBLIC PERCEPTIONS

Compliance with standards

Information collected from Lusaka was consistent on the issue of the rule of law. In a nutshell, it indicated that most judges and magistrates comply with the rule of law most of the time. The failure on the part of some is attributed to a gradual decline in standards and professionalism. It is also evident in behaviour such as a failure to declare an interest in a particular case.

However, the study also found that failure to comply with procedures could be attributed to ignorance of the system as well as limited knowledge and use of procedures because lawyers and judges ‘do not read’. The procedural materials are available in the judiciary libraries but they are not consulted as a matter of practice. Knowledge and application of relevant procedures would make the judges more effective in the administering of justice. Lawyers’ attempts to get judges to apply some of the unused procedures were often met with resistance, to some extent because the judges were unclear about their role and did not want to feel that they were being taught the law.

Efficiency

In evaluating the performance of the judiciary, public officials in a national governance survey rated the Supreme Court as the most efficient judicial organisation, with a positive rating of 31,9 per cent. However, 19,3 per cent of the respondents rated the Supreme Court as either inefficient or very inefficient. The local courts received the most negative evaluation of the judicial institutions, with 42 per cent of public officials rating their services as inefficient or very inefficient and only 16,6 per cent rating them as efficient or very efficient.

In reaction to this mostly negative sentiment, judges felt that the public were too narrow-minded and insensitive to the budgetary constraints the judiciary had to contend with and to the fact that judges were only human and subject to the same pressures in society to earn a living and be part of their families. The total number of some 40 judges was inadequate to service a nation of 12 million people and a judge in a court like Lusaka had to handle as many as 200 cases in a year.

Remuneration and conditions of service

One of the concerns with awarding adjudicators hefty pay rises is the perception that the judges are being 'bought'. To overcome this perception the tendency now is to award judges the same percentage point increment as the rest of the civil service, but only after the rest of the civil service has been paid. According to the Ministry of Justice, some of the fringe benefits to which judges are entitled to are not delivered in practice. The package as a whole is adequate to ensure delivery of justice and dissuade judges from succumbing to corruption. All the same, it was argued that most judges apply the rule of law not because of the remuneration package but for professional reasons. They see themselves as independent even at the personal individual level.

High-ranking government lawyers stated that the enactment of the Judicature Administration Act increased security of tenure for judges, and adequate salary and retirement package for judges had substantially increased the court's independence. There have been suggestions that the retirement age should be increased from 65 to 70 but that the contract terms offered after retirement should not be renewable to eliminate any inducement to adjudicate in line with government interests. There is an annual automatic adjustment of salaries

and other fringe benefits. The institutional independence is also reflected at the individual level, although some judges remained compliant in their approach to adjudication. Unfortunately, such failure to embrace and exert their independence is perceived by the public as evidence of intimidation and that the judiciary as an institution is controlled by the executive.

However, the improved conditions do not extend to the Industrial Relations Court and to the lower bench. Although they handle very sensitive cases, magistrates remain vulnerable to dismissal, many of them are employed on contract, and their remuneration packages are minimal. Furthermore, there have been dismissals based on mere allegations of corruption. At present there is no government programme in place to address the imbalance in the conditions of service of the upper and lower benches.

The judges emphasised that although personal emoluments had improved, the general funding of the judiciary remained problematic and resources for managing the judicial process and paying support staff were still at critical levels. The amounts (40 per cent of court fees) retained at each court house are too low to cover recurrent expenditure. These fees have to be kept down to ensure access to justice, so the difference should be made up by other means. Remittances from government are slow and erratic. A judge gave an example of a situation where her computer, which contained partially written judgments and other key documents, broke down but was not repaired for two months.

From the magistrates' point of view, the improvement in their remuneration, which at K5 million (US\$1 500) per month is better than that of other graduates in the civil service, is still insufficient to enable them to meet their basic needs and the temptation to succumb to bribery remains strong, particularly because of the nature of the work and the expectation that magistrates should maintain a certain standard of living.

Delays

Adjournments were repeatedly identified as a major problem. As one respondent put it:

How many times must a case be adjourned? People do not know what to do in the face of these adjournments. Even murder cases are adjourned umpteen times and witnesses give up in the process because it is too

costly to keep returning to the high court, which may be several hundred kilometres away.

The respondents felt that the formal system was quick to arrest but slow to prosecute, mainly because of continuous adjournments. As a result, cases last for a period of two to five years, a situation that does not arise under the customary law system. The respondents felt that these adjournments are prompted by covert attempts to solicit bribes. Participants in group discussions also felt that case decisions were often wrong because of corruption and the payment of bribes. There were allegations of cattle, goats, bags of maize, soft drinks, bread and other gifts being given to named magistrates.

According to the national survey, business enterprises identified the length of the court process as the second most serious obstacle to accessing justice and 25 per cent of managers stated that bribes are paid to speed up judicial proceedings. Gratification in the courts also affected the poorest socio-economic households and business enterprises the most.

The distance from the courts and high lawyer fees were also identified as obstacles to accessing justice. A significant rural urban divergence in views was observed. Thus 56,8 per cent of urban households ranked high lawyer fees as an extremely important obstacle, as opposed to 45,2 per cent of rural households. Similarly, 51,3 per cent of urban households ranked gratification as an extremely important obstacle compared to 44,3 per cent of rural households. Surprisingly, 32,8 per cent of urban households felt courts were too far away from them whereas only 14,1 per cent of rural households held the same opinion.

In response, both lawyers and judges stated that these complaints were mainly due to a misconception of the way in which the general law system operates. It was slow as a result of low institutional capacity.

Independence and impartiality

A female local court justice in Petauke defined independence of the courts as ‘the ability to adjudicate matters without interference from the public’. Court personnel in Petauke stated that civil society does interfere with court proceedings, and one respondent cited the Chiluba and Bulaya cases as examples of criminal proceedings instigated and pursued upon the insistence of civil society.¹³⁷ Furthermore, chiefs interfere in local court proceedings, particularly where these

are far removed from peri-urban centres. The interference is particularly likely in cases that involve relatives of the chiefs in question. However, the court staff stated that in their district, the courts operated independently from the executive. Even supervising officers did not interfere in court proceedings and allegations of corruption with regard to decisions in certain cases had not been proven.

The police in the Petauke area stated that the courts were independent but were sometimes pressured by the local community to convict regardless of the weight of the evidence – this happened particularly in sensitive cases such as sexual offences against children. This finding again points to a lack of public understanding of the common law principles of evidence that ‘the case must be proven beyond reasonable doubt’ and ‘the burden of proof rests upon the prosecution’. A senior police officer stated that there is some executive interference in cases with political overtones such as the Bulaya case where the state seemed to employ delaying tactics for prosecuting Mr Bulaya. An added complication arises in cases of incest involving minors where the prosecution of family members is problematic because many family members refuse to testify and prefer to resolve the matter within the family. The role of the court in cases involving their family members is also sensitive. A local court justice said that she refrained from hearing cases that involved her relatives, neighbours or other connected persons to ensure that her judgments were seen to be impartial.

On the question of impartiality, data from Lusaka showed more complexity than that from rural areas. First, judges were not seen to be gender sensitive. Some practitioners stated that male judges were biased against women, whereas others claimed that female judges were biased towards women. Second, the problem of political affiliation as a factor in the determination of cases was raised by one legal practitioner, who felt that pro-opposition judges tended to victimise lawyers known to be affiliated to the state. She consequently often requested that her cases not be allocated to such judges. However, the majority of lawyers denied that there was any appreciable opposition party or other political influence.

On the independence of the judiciary, the Lusaka data indicated that the courts are at present enjoying the highest levels of independence but that they feel pressured by the media, specifically *The Post*. Court staff felt that *The Post*’s coverage of a particular case and its sentiments on the issue forced courts to adjudicate in certain ways.

All participants in Lusaka denied that the executive had any direct appreciable influence on the performance of the courts. The case of *The People vs*

Chiluba in the subordinate court was cited as an example of a case in which the adjudicating magistrate had consistently overruled state applications that he felt were unjustified. The conviction in the Bulaya case is also seen as confirmation of the court's independence.

Respondents drawn from the legal fraternity stated that pressure to adjudicate in a particular way did not come from the state but from the parties in the case. They cited examples of corporate or individual clients who stated that they would 'handle the judge' in order to ensure judgment in their favour and that the role of the lawyer was simply to go through the motions of arguing the case. Only one respondent noted that government may exert potential pressure on adjudicators in its role as the indirect employer, even though there was very little evidence of actual interference from government and the executive in particular. Even in situations where the executive appeared to resist the prosecution of certain parties, as in the Bulaya case, participants felt that this was because of inadequate information on the part of the President and the need that he move only on solid evidence. The President's stance on Chiluba was defended on the grounds that he had initiated the removal of immunity as per constitutional procedure and any pronouncements he made later with regard to the prosecution process were intended to speed up the process rather than influence the final outcome in the case. In any case, Mr Chiluba was free to vigorously contest and delay the process of justice through his many constitutional and procedural challenges.

Lawyers attributed the absence of pressure from the executive and government to the increasingly vigilant and vocal role that NGOs, the media and the general public played as democratic governance, transparency and the rule of law took root in Zambia. They stated that there are some groups in society that are now politically stronger than the government, and in fact so strong that they no longer fear and respect the judicial process. They have family and friends who are judges and socialise with members of the judiciary informally, and as a consequence nepotism and patronage have become rife. Some defendants are said to seek representation by particular lawyers because of their personal connections to certain judges.

Judges who were interviewed confirmed that they enjoyed adequate levels of independence at both the institutional and the individual level and that there was no pressure from government, but there was need for more fiscal autonomy. They felt that pressure from the public was directed more at Parliament than

at court trials. The judges denied any attempts to bribe them either directly or through their marshals and stated that the lack of confidence in the judiciary was because the general public itself was corrupt. Although it was possible that some judges succumb to bribery and nepotism, they argued that this was unlikely because of the great risk to their personal reputations. The public tended to see corruption in every judicial decision with which they did not agree. In fact, even a pay increase was interpreted as an attempt on the part of the executive to bribe the judiciary.¹³⁸ In the lawyers' opinion judges enjoy adequate independence although a few timid judges still fail to take advantage of this independence in their individual capacity. As one advocate put it 'judges are at the best place in their history'.

The presidential petition in which the Supreme Court ruled that the current President was duly elected was cited as a case in point. Another example was that of the election petition against the current Minister of Finance, which was resolved in his favour. According to the judges' summation, malice and a failure to read the judgment in full and follow the reasoning of the court were largely responsible for fomenting a lack of confidence in the final decision of the courts.

The issue of impartiality on the part of the courts was regarded differently by court personnel interviewed in Petauke. The respondents claimed that the rural subordinate courts were more impartial than their urban counterparts. However, they acknowledged that there was often inappropriate pressure from local chiefs, especially in the local court hearings. Promotion of equality, particularly gender equality, was considered to be problematic in the rural areas because of the influence of gender biased customary laws. However, the female justice from the same area stated she was an example of gender equality in the judiciary and was proof that women had equal access to the justice system since most of the litigants in civil cases were female.

According to magistrates they enjoy independence in the sense that they have complete control over the trial of a case once it has been allocated, although they sometimes face pressure from colleagues on how they should determine a particular matter. Such pressure may be due to expectations to mete out harsh punishments or requests for leniency because a particular accused person has connections to another judiciary employee. As far as pressure from the public is concerned, this was quite intense in high-profile cases because the public draws its own conclusions on the matter and the court is itself literally 'on trial' as it hears the case. The anti-corruption crusade has further added to the pressure

because the public do not understand the delays or the acquittals, which are necessitated by the rigorous procedures and standards of proof applicable in criminal trials. Even though court officials in Petauke see themselves as impartial, independent and free of corruption, this perception was not shared by either the police or NGO participants.

Commenting on their own status as government lawyers, the officials admitted that due to his training as a lawyer, the President did to some extent interfere by questioning their handling of certain government cases. However, other government departments do appear to respect the opinions of and defer to the advice of senior government lawyers. With regard to the increasing pressure on the judiciary from multiple and non-traditional entities in society, the government lawyers indicated that there was a need to find the means to insulate the judiciary from these insidious forces without curtailing the freedom of such groups in society. Attempts to regulate NGOs and the media and make them more accountable had met with vigorous resistance and allegations of ‘gagging’. The weakness of the government has translated into a weak judiciary that is unable to defend itself because of its status.

It was concluded that, generally, there was no interference from the state but that partisan politics, nepotism, NGO agitation and the status of the litigants were possible factors in the determination of certain cases. Only one court official felt the media had no impact on the litigation process. He stated that the media report the facts usually after a decision has been rendered. In their own defence magistrates stated that they rule in accordance with the law and do not succumb to pressure from any source, including the media.

The rule of law

With regard to the judiciary’s compliance with the rule of law, government lawyers felt that the judiciary displayed some lapses in their understanding of procedure and delayed judgments without justification. They claimed that they were more likely to comply with legal procedures than private defence attorneys. However, they noted that in their enthusiasm to exercise their newly found independence, some judges made it very difficult for the state to win a case with any perceived political overtones. In fact, such cases may be lost even though the government has a strong case simply because the court is affected by popular perceptions of the issue before the court. They cited the example of

the London High Court judgment delivered in 2007, which the state has so far without success tried to register in the Zambian courts.¹³⁹

In response to lawyers' complaints about delays in the courts, judges replied that delays were initiated and perpetuated by the parties themselves who persistently sought adjournments for all sorts of reasons and by lawyers that juggled matters before various courts because they took on more than they could manage effectively. Judges that refuse to grant adjournments are criticised for being too rigid. Another reason was the need to comply with procedural requirements that are an integral part of the justice delivery system. Shortcuts were not possible unless the procedural laws were amended by Parliament. A third reason was the poor timekeeping by lawyers, which led to overruns in hearings.

Magistrates demonstrated a good knowledge of the Penal Code and the Criminal Procedure Code, raising doubts about the allegation that there is inadequate knowledge about the criminal law and procedure in the courts. They stated that they constantly refer to statutes during criminal trials. This enables them to identify efforts to mislead the court by some litigants or their lawyers. They indicated that they endeavour to comply with the law even if they have misgivings about some of the punishments provided by law for certain offences.

Human rights instruments: knowledge and use

Respondents drawn from court personnel in both the group discussions and the key participant interviews in the rural areas indicated that they were unaware of international human rights instruments relevant to the administration of justice. However, they were aware that accused persons had certain rights. In Petauke participants stated that accused persons had the right to appear before the court and to defend themselves and that suspects could apply for adjournments due to illness or other reasons. They have a right to refuse to be tried by a particular magistrate even where such objection resulted in the case being returned to the provincial headquarters for re-allocation. Grounds for such refusal are generally a fear of an unjust trial due to a personal relationship or other vested interests between the parties.

Whilst the magistrate in Petauke had received some training in human rights, the clerk of court had not. The local court justice had received two weeks of training under a donor-funded project during which local court officers were introduced to a number of human rights instruments and trained

in the importance of promoting the equality of all persons before the law. A female local court justice who had received similar training under the same programme articulated human rights as equal access for all people regardless of gender, the right not to be intimidated by the judicial process, the right to call witnesses, and the right to appeal to higher courts. She stated that she often consults the training manual and handbook when adjudicating. Furthermore, she personally tried to always comply with the rule of law regardless of interference from traditional rulers who wanted to supervise court proceedings and thereby complicated the process. In addition to human rights the training covered the rule of law, as well as the procedures and jurisdiction in the local courts.

The female justice from Petauke had also received training from the Anti-Corruption Commission on the effects of corruption and that it tended to compromise the delivery of justice. Respondents observed that training as a whole is neither repeated nor ongoing, so incoming personnel did not have the same level of knowledge. Although such new personnel receive local court handbooks that contain the same information used in training, it is uncertain whether they actually read, understand and consult these books on a regular basis.

The judges did not display substantially better knowledge of international instruments and the extent to which they had been incorporated into domestic criminal law and procedures than did other participants. They generally stated that international instruments are persuasive and that certain instruments had affected certain aspects of law, such as the CRC which had influenced juvenile justice. The extent to which international instruments are used also depended on whether lawyers referred to such instruments in their submissions and arguments.

With the exception of personnel in the international law department, government lawyers said they were not aware of any specific instruments that have been domesticated or were directly referred to by the courts. They expressed concern that this may lower the standard of justice applicable in Zambian courts, referring to the situation in which child/juvenile offenders are held in the same cells as adults.

Lusaka magistrates indicated that they recognised the relevance of international instruments such as the Convention Against Torture and Convention on the Elimination of All Forms of Discrimination against Women in the adjudication process.

The participants from Lusaka as a whole did not have specific knowledge of international human rights instruments and the extent to which they had been

incorporated into Zambian law. One lawyer stated that although the Ministry of Justice claims that the content of most international instruments has already been incorporated in domestic laws, this was not true. Rather, there still seems to be a great deal of resistance to many human rights principles and the rights to life and liberty are violated by law without constitutional challenge: For instance, while the death penalty has been abolished in many countries, it is still applicable in Zambia. No bail may be granted for offences such as motor vehicle theft and there is no police bond because of an arbitrary change made to the law a few years ago. Despite random reforms to several laws, Zambia is for the most part dependent on old English laws, practices and procedures that have since been modernised in England. This failure to evolve cannot be blamed on the judiciary as they simply apply the law enacted by Parliament. However, the Law Development Commission has not been very active and Parliament appears to enact laws erratically.

From a review of all responses from the research sites it seems that only the local courts have been methodically exposed to international instruments through training on human rights conducted countrywide by the Danish International Development Agency (DANIDA) and German Technical Cooperation Agency.

RECOMMENDATIONS/PLAN OF ACTION

Judiciary

The government should strengthen and intensify projects already under way to implement human rights standards, guard the independence and impartiality of the judiciary, and improve infrastructure and conditions of service of adjudicators. To this end the government should bolster projects to implement human rights standards; strengthen the independence and impartiality of the judiciary; and improve infrastructure and conditions of service of adjudicators.

Law reform institutions should strive to create a modern unified standard of justice in criminal law. Human rights should form the single unifying standard common to both general and customary law.

The judiciary should rebuild its image. A campaign should be carried out by the judiciary itself to alert the public to the fact that the judiciary is independent from government.

Support of legal aid institutions

The resource of governmental and non-governmental legal aid institutions should be developed to improve access to justice by the poor. The many problems experienced by the Legal Aid Board is a clear indication of inadequate funding. Mechanisms should be developed to ensure that the Legal Aid Board has a presence, especially in the rural districts. Legal aid should be brought to the people in a similar fashion to paralegals who have been placed in the communities.

Paralegal staff

The importance of paralegals to facilitate second-level access to justice cannot be overemphasised. However, their use should be institutionalised and guidelines be developed to ensure professionalism in their work. The training of paralegal personnel should also be institutionalised. Paralegal personnel have the potential and ability to inform communities about substantive and procedural law in a manner that they can easily comprehend.

The Law Association of Zambia should make the skills of its members available to the people by training and mentoring paralegal personnel, and developing the resource materials to be used by paralegal personnel.

Civil society

Civil society should become more involved in issues relating to access to justice and the provision of legal aid to the poor. There are a number of civil society organisations working in the rural areas which could help to create awareness about the existence of both formal and informal forms of access to justice. These organisations should also be engaged in the education of the public about their basic rights and duties.

Infrastructure development

The development and provision of infrastructure to courts is a critical element in accessing justice and creative way should be sought to overcome present shortages. Court space could for example include ‘informal’ court houses to

operate as dispute resolution centres. A holistic approach should be adopted to ensure that recruitment and placement of judicial officers are done simultaneously with the expansion of court space. There is also need to complement the efforts of NGOs in providing legal advice centres that could be manned by paralegal personnel under the aegis of the ministry responsible for community development and social welfare.

Court procedures

One of the issues identified by participants in the study was the issue of delayed court processes which often result in justice being denied to the accused. Criminal cases are essentially supposed to be disposed of within a period of one month while local court cases could take up to two months. However, in reality many cases take much longer than this and people have been incarcerated for longer for such basic reasons as a lack of transport for witnesses from their locations to the courts. The only courts readily available to especially rural residents are the local courts. Such people have to travel to the nearest urban areas to have a hearing and because they lack of resources to make the journey, it limits their access to justice. Rural women in Zambia follow a culture of limited mobility outside their own home areas which has a serious effect on whether or not they take their issues to courts far from their homes. This is one of the reasons why many women do not receive judicial help. Women interviewed from the peri-urban areas of Lusaka Province said that they preferred to resolve conflicts within the family or to take it to any relevant body located in their residential area than to go to a court in the city.

There is need to promote alternative dispute resolution mechanisms that have minimum reliance on legal skills. A classical example in this respect is the practice of mediation.

Case management

There is need to improve case management within the judiciary. Some of the excessive delays in disposing of cases in the judiciary are as a result of the absence of effective case management techniques. Electronic systems should be introduced to monitor the disposal of cases in the superior courts.

Coordination

Coordination and networking of agencies involved in the delivery of criminal justice should be improved. To this end partnerships between governmental and non-governmental organisations involved in the delivery of criminal justice should be strengthened.

Training programmes

Training programmes should be launched to improve the skills of personnel involved in the delivery of criminal justice in general and in matters relating to gender, juveniles and human rights in particular. This could be done through exchange visits and study tours for relevant officers.

Domestication of international treaties and conventions

There is need to conduct an audit of the international treaties and conventions ratified by the Zambian government. The audit should be followed by a programme of domestication of these treaties and conventions.

Juvenile justice

The laws dealing with juvenile justice should be reviewed and modernised. The establishment of child friendly courts should receive urgent attention.

6 Customary justice

CONCEPTUAL FRAMEWORK OF THE CUSTOMARY CRIMINAL JUSTICE SYSTEM

Zambia has a plural legal system consisting of general law based on English law, customary law, and a variety of bodies of rules and practices generated by semi-autonomous social groups like the church. Customary law consists of the customary laws of each of Zambia's 73 ethnic groups. Since these laws have never been unified or codified in Zambia, the term 'customary law' does not refer to a single common system accepted in the whole country but to customary laws regulating the rights, liabilities and duties of the different ethnic groupings.

Customary law is informal and is geared to the needs of the people it serves. It is not written down and rarely requires reference to broad generalisations or abstractions or to carefully constructed analogies from the past. It is characterised mostly by its remarkable flexibility and pluralism. As indicated earlier, it differs from place to place and ethnic group to ethnic group, and even from time to time within a single area as leaders change. The customary justice system therefore does not emphasise rules for the delivery of justice, such as fairness, nor does it endeavour to emphasise the rule of law.

The courts of chiefs and headmen constitute the customary criminal justice system. These structures of dispute settlement predate the colonial period. Kakula¹⁴⁰ studied traditional court structures among the Lozi living in the former Barotseland in Western Zambia and observed that in the colonial days the Barotse traditional judicial system had existed parallel to the formal judicial system.

The pre-colonial law in Zambia was essentially customary law having its source in the practices and customs of the people. During the colonial era the British employed a dual system of law whereby English law was applied in areas affected directly by their rule but customary/traditional law was used in areas under 'indirect rule', mainly for the native population under the supervision of the British. English law applied in all areas to people of English descent as well as to Africans who 'opted out of' customary law. The colonial regime recognised customary law, especially in the area of personal law, from the outset. Article 14 of the Royal Charter of Incorporation provided that in the administration of justice to the native people, careful regard was to be had of the customs and laws of the class, tribe or nation to which the parties to a dispute belonged. Customary law was retained in recognition of the fact that all societies have patterns of related systems of customs, norms, values, expectations, beliefs and assumptions that are rarely questioned but which guide the behaviour of individuals in that society.

The Barotse royal establishment described their elaborate governance system in which the chiefs exercised their powers through the Barotse national government. All courts formed part of this system. A percentage of the taxes went to the central administration and the rest to the Barotse Royal Establishment. The Litunga (the chief) had certain powers and was well respected. The laws that were in place were considered good and reasonably fair compared to statutory laws. Upon attainment of political independence from the British, the customary system was destroyed through the 1965 Act of Local Government and the powers of the chiefs were removed by the Local Courts Act that came into effect on 21 April 1966.

In essence the colonial period resulted in the gradual transformation in the character of customary criminal law, for example banning the execution of witches, a practice that is repugnant to natural justice and good conscience.¹⁴¹

The 1929 Native Order-in-Council which was established to administer the local customs and traditions of the indigenous people also recognised the chiefs' courts. These were called the native courts and were presided over by chiefs and paramount chiefs. There was also a territorial jurisdiction which

similarly distinguished between paramount and junior chiefs. Whereas a paramount chief could deal with cases in the whole of his territory, a junior chief or headman could only deal with disputes in his sub-territory. All serious cases were referred to paramount chiefs.

Native appeal courts which could hear appeals from the lower courts within the chiefdom were set up in 1964. Paramount chiefs' courts sat as native appeal courts, and where there was no paramount chief, three or four chiefs sitting together constituted an appeal court. Native courts exercised jurisdiction in civil and criminal matters and the ordinances, provided that the native courts were constituted according to native law and custom of the area in which the court had jurisdiction.¹⁴²

In 1964, when Zambia attained its independence, there was also a change to the legal system of the country. The independence constitution introduced the concept of the independence of the judiciary. In 1966 the native courts were reconstituted as local courts under the Local Courts Act. These were supposed to be the lowest courts in the judicial structure, administering customary law with a national character in terms of jurisdiction, as opposed to the chiefdom territorial jurisdiction of the native courts. However, the chiefs' courts were not integrated into the new dispensation and still operate parallel to the centrally administered judicial system to the present day. The chiefs' courts have a common jurisdiction with the local courts in customary law matters. Kane and his co-authors¹⁴³ confirm this, stating that informal customary law tribunals continued to operate at village and community levels in several forms, including councils of elders, clan or family tribunals and village associations, in the post-independence government.

Nevertheless, the traditional courts are not recognised as part of the judiciary or by statute and even their existence is not recognised. A further problem with matters as they currently stand is that officers serving in the local courts do not have sufficient knowledge of customary law as they are not the custodians of customs and traditions like the chiefs and their headmen. Consequently scholars argue that there is a people's customary law and a state customary law, or an official customary law and a living customary law. The difference between state or official law and people's or living customary law is that the former denotes a static form of customary law while the later denotes a dynamic and flexible form.

Customary law has its roots in the culture and traditions of the people; it therefore grows and evolves with the people.¹⁴⁴ It is derived from the customs

and practices of a people and is based on their beliefs and values as an ethnic group or society. It has provisions for punishment and remedies for transgressions. The customary justice system also distinguishes between crimes and civil wrongs. There is ample evidence to show that such a distinction exists in which offences against the person - for instance homicide, assault, sexual offences, and offences against property, such as theft - are all regarded as criminal offences. Generally, crimes are wrongdoings that contravene the basic beliefs of the community, while civil wrongs are directed against the individual. It should also be noted that the basis for distinction differs from one community to another, because each ethnic grouping has its own set of customary beliefs and laws.

CUSTOMARY LAW AND THE CONSTITUTION OF ZAMBIA

Article 23(4)(c and d) of the Constitution of Zambia recognises the application of customary laws in certain matters impacting on human rights, especially those of women and children. Customary law and practice place women in a subordinate position to men with respect to property, inheritance and marriage, which contradicts various constitutional and legislative provisions. Under the traditional customs prevalent in most ethnic groups, all rights to inherit property are vested in the family of the deceased husband. However, the aim of the Intestate Succession Act, 1989 (Act 5 of 1989) is to ensure that women get a share of the joint estate. In terms of the Act the children of the deceased man equally share 50 per cent, the widow receives 20 per cent, the parents receive 20 per cent and other relatives receive 10 per cent.¹⁴⁵ A 1996 amendment to the Act provides that the widow's 20 per cent share may be divided equally with any other woman who can prove a marital relationship with the deceased man, thus granting inheritance rights to other wives, mistresses and concubines.

In practice, 'property-grabbing' by the relatives of the deceased man continues to be widespread, particularly in the jurisdictional areas of local courts. These courts often use the Local Courts Act to override the provisions of the Intestate Succession Act. The fines mandated by the latter for property-grabbing are extraordinarily low, and as a result many widows receive little or nothing from the estate.¹⁴⁶

The basis of such practices stems from the distinct culture and customs of the different ethnic groupings. Most ethnic groups follow a matrilineal line of descent. However, irrespective of whether the system is patrilineal or matrilineal,

male domination (patriarchy) is common among all ethnic groups and there is a clear preference for male heirs. Moreover, government policy has helped to reinforce patriarchy through the recognition of men as the heads of families and custodians of children, which has actually removed the rights that women from matrilineal groups enjoyed with respect to rights over children and land.

In Zambia some of the factors contributing to the spread of HIV/AIDS are embedded in customary laws and practices, too, especially in relation to divorce, adultery, child marriages and defilement. According to the 1998 Sexual Behaviour Survey of the Central Statistical Office, some of these customary practices entail sexual cleansing of widows and widowers, remarrying irrespective of the cause of the spouse's death, and requiring that women be submissive to their spouses.

The Zambian Constitution entrenches the equality principle in article 11 of the opening statement of Part III. Despite this, gender studies and empirical evidence in Zambia still show that in most cases the violations of the rights of women are not regarded as a human rights issue.¹⁴⁷ This view is supported by the fact that when the Constitution was reviewed in 1996, the Bill of Rights was not expanded to include the rights of women and children.

CUSTOMARY LAW AND LEGAL PROTECTION OF HUMAN RIGHTS

With respect to the application of customary law, the question is not whether it is possible or desirable to replace it by statutory or state law in the abstract. Rather, it is the relationship between the application of customary law and the legal protection of human rights that is at issue. On one level, since customary law will probably be perceived by local populations as more culturally authentic, accessible and useful than the externally imposed (colonial) legal systems, its forcible displacement may itself constitute a violation of human rights. The statutory legal system infrastructure is incapable of properly serving urban populations, let alone the rural populations, to whom access and costs are particularly problematic. Neither are they conceived or implemented in ways that necessarily offer better protection of human rights than customary law. However, the cultural authenticity or practical expedience provided by customary law should never be upheld at the expense of effective protection of human rights, especially those of women, who suffer most under various customary law systems. The challenge is therefore to regulate the content and application

Table 10 Distinction between customary and statutory justice

Statutory courts	Customary courts
Used to administer statutory laws	Jurisdiction in customary matters
Arrest without investigation	No arrest without investigation
Hostile and non-consultative system	User-friendly system
Intestate Succession Act wrongly interpreted and misapplied in rural areas	Apply customary rules to administer and share inheritance among the clan
Paralegals do not relay correct information	Accused/victims both comfortable with medium of communication - vernacular language of that community
Local people often prefer to go straight to the local courts that apply both statutory and customary law	
Intimidation of accused	

of customary law so that it offers better protection and promotion of human rights in local communities.

THE POSITION OF THE CUSTOMARY CRIMINAL JUSTICE SYSTEM IN ZAMBIA

This study found that the traditional courts administered by the chiefs are functioning well and that they constitute viable justice delivery systems. This is despite the fact that these courts have no constitutional recognition as part of the judiciary, which means that they receive no backing from state machinery in enforcing their judgments. The result is that the customary criminal justice system is important although neither the system as such nor its workings and effects are recognised by the state. In fact, the system is neglected and ignored and generally viewed in fairly negative terms. It is seen not only as archaic and ‘backward’, but also as incompatible with modern-day economic, social and civil rights and notions of ‘justice’ attributed to English law.

Existence

The customary criminal justice system exists despite having no physical infrastructure in any of the three chiefdoms visited during the course of this

research. Most proceedings are held under trees and proceed informally. They are easy to access because courts are usually set up in central rural locations. In the case of Western Province, respondents said that the customary criminal justice system had historically been quite elaborate and systematic but that the onset of independence led to its demise. A number of participants felt that the new independent government had tried to destroy existing structures of local administration, among others by destroying the role of chiefs who were the custodians of the customary justice system. The system is ignored by the political governance structures and like the position of chiefs, receives little recognition.

Respondents felt that in the absence of good laws to protect the customary criminal justice system, it would be difficult to restore the system to its 'former prestigious position'. In addition, there is a lack of political will to have the system popularised. It is argued that the British revision of indigenous judicial systems in Africa was fundamentally hypocritical, because on the one hand they sought to preserve customs by recognising customary institutions but on the other hand they served as a vehicle for moulding the native system into links consonant with modern ideas and higher standards. Chirayat et al¹⁴⁸ contend that failure to recognise the customary criminal justice system is in itself discriminatory or exclusionary and inequitable, for there are many good reasons why people choose to use this system, which should be considered and understood. In fact, ignoring or trying to eliminate the use of customary law in the criminal justice system and focussing purely on the formal system assume that the latter system is accessible to all, while this is not the case. The Law Development Commission's Report on the Local Courts System¹⁴⁹ acknowledged that the traditional court system is still viable in most parts of the country and is used by both urban and rural residents.

In all the three chiefdoms visited during this review, customary criminal justice is considered part of the governance system. Participants stated that even when there is a local court in an area, people preferred to take their cases to customary courts because of the following factors:

- The customary court is more democratic in that all parties have a hearing without much bias, except with regard to gender and age
- People are more familiar with the traditional system, although not written, than the statutory system

- The customary criminal justice system is part of the traditional dispute resolution system and according to the members of the public interviewed, as such it is much more elaborate, efficient and effective because it takes a short time in terms of administration of justice, there are fewer adjournments, and the procedure is known to the people. Similarly, it is conducted within a familiar environment and so less intimidating to the parties. In comparison the local court system is regarded as insensitive to the needs and interests of the accused, while the aggrieved families felt that the local courts were prone to corruption and other abuses in murder cases
- The administrators in the local courts are unfamiliar with the customary justice system and just doing their work. They are not the custodians of the customary law and are therefore not well equipped to deal with it
- There is no equitable access to justice in the local courts for the poor, so they prefer the traditional system
- It is based on the people's traditions and customs and therefore closer to them
- Women, too, use the traditional customary system because they are familiar with the procedure as opposed to local courts
- The local courts use the processes and procedures of the formal law system since they are part of the formal justice system

Nature

All participants demonstrated a passion for the customary criminal justice system, arguing that it is more humane. In Western Province participants indicated that as a province, communities benefited more from the traditional system than the statutory system which in their view promoted the values of the British from which the statutory law originated. They cited the following benefits of the customary criminal justice system in murder cases:

- In Chief Choongo's and Mwanza's areas the accused carries the costs of burying the deceased, feeding the mourners, etc
- The bereaved family is compensated for the loss of their family member. In the formal system there is no compensation to the family
- A murder case is considered to be a matter between the two families, in contrast to the formal system in which the accused is tried alone and against the state. The case is thus removed from the family to the state

- Once compensation has taken place the matter is finalised, and the process concentrates on reconciliation and restoration in the relationship between the two families. Harmony is encouraged

However, the absence of trained lawyers in the local courts could result in questionable and unstandardised norms of justice. Although this could be justified on the grounds that there are very few formal rules and therefore there is no need for lawyers in customary courts, it is a disadvantage to those litigants who would like to use lawyers. The procedures in these courts are so dependent on the subjective views of the local court justice that he has a wide latitude for the dispensation of (dubious) justice. This worsened by the fact that the justices in the local courts receive no formal training.¹⁵⁰

THE FRICTION BETWEEN THE CUSTOMARY CRIMINAL JUSTICE SYSTEM AND THE LOCAL COURTS

Local courts were established just after independence under the Local Courts Act of 1966. According to the Zambia Law Development Commission local courts were established with the intention of replacing the traditional courts, which they have failed to do. The introduction of the local courts was also intended to increase the standing of the customary courts to a national level so as to achieve a uniform administration of customary law across the country. The local courts are supposed to use customary law and because they are part of the formal justice system, they are not allowed to deal with criminal cases. According to chapter 29, section 12 of the Local Courts Act, customary law should be implemented in the local courts, unless it is against the written law. Despite this pronouncement it is not clear which customary laws should be implemented in practice. The local courts were also intended to separate chiefs from the administration of justice. This objective failed to take into consideration that chiefs are the custodians of the customary criminal justice system and so could have been the most instrumental in the development of the local courts as they are closest to the people.¹⁵¹

Participants from Chief Mwanza's area stated that statutory law was used to administer local community issues in the area. In the view of the participants the result was that a system which was supposed to be pro-people was hostile and less consultative. They also argued that the Intestate Succession Act had eroded the Tonga culture. Chief Choongo was equally concerned about the

application of the Intestate Succession Act, which is considered to result in he called ‘property-grabbing from the clan’. Once a person died, customary practice was not applied but instead, the property of the deceased person, as well as the property to which he had a custodial right but which actually belonged to his whole clan and relatives, was divided according to the provisions of the Act. This has on occasion resulted in people being imprisoned over property belonging to the clan. The headmen all argued that this happened because the local courts in the area either did not know the customary justice practices at all or if they did, preferred to apply statutory law even in the local courts.

The study found that the Intestate Succession Act is misinterpreted and misapplied in many areas of the country, causing fragmentation and conflict between the families and especially between the women and children. This situation will only be resolved if paralegals and the local court justices receive training on the Intestate Succession Act so that they could relay correct information to the communities. In some cases, the administration of justice according to customary practices was considered to suffer from abuse because it was not written down. This made it possible for individuals to deliberately misinterpret the law to suit their individual interests, or for rich persons to bribe those who preside over issues at the expense of justice. Obviously poor people - and also women in general - suffered most from the abuse of the local courts system. They could not ably present their cases or even receive a chance to be heard. One woman in Mwanza said that ‘local courts overrule us on almost everything. Even when we know how the case should go, their word carries the day.’

Non-codification

Part of the problem identified with regard to the customary criminal justice system is that it is not in a written form. The problem of interpretation is complicated by the fact that it differs from tribe to tribe. Most participants agreed that a systematic documentation of the customary laws would solve many of the problems.

The human rights issue

The WLSA study on the changing family in Zambia shows that there is an indigenous concept of human rights under customary law which is broader than

the legal or universal concept. While international human rights law focuses on individual rights, customary law focuses on the group rights of the extended family. In sexual offences, for instance, the offence is considered to have been committed against the family as opposed to the individual. This is one of the reasons why the customary criminal justice system is not recognised by the formal system.

PROCEDURE FOR HANDLING CUSTOMARY CRIMINAL JUSTICE

Not only is the system itself not in written form, but neither is the procedure for handling customary criminal justice documented. This was experienced first-hand in all the three chiefdoms visited. Among the Tongas in the areas of Chief Mwanza and Chief Choongo, the people involved in a customary case are the family members, headmen/headwomen and the chief.

There is no standard procedure that is followed in all areas, or even with respect to different cases within one area. Usually the family of the aggrieved will report the case to the headman/headwoman who then asks the accused to give their version. It was not clear whether the family of the accused or the accused himself or herself had to respond. The proceedings are held at the court of the headman.

Generally, clan members from the two families that are involved choose their clan leaders and sometimes also other members who then form a 'team' to mediate the process. The accused is represented by his or her clan and is not physically present, the idea being that if the accused is present the process would be more subjective and increase the emotional tension of the members of the aggrieved family. Depending on the seriousness and level of tension, a case can take days, weeks or months and occasionally even years to settle, though this is rare. If the parties are not satisfied with the settlement of the case at clan level, the matter can be taken to the next level (the headmen) and thereafter the chief. Dissatisfaction usually relates to the compensation decided upon, with the aggrieved wanting more or the accused feeling that they have been overcharged. Once both groups are satisfied with the compensation, the accused family settles it and the case is concluded. Nothing is written down and the whole process is verbal. In one case where a woman was killed, the case was settled between the two families without involving any village leaders such as

headmen. Only if a case is not settled at this level is it heard at the formal court level. It is once it reaches this level that people fear that it will become subject to abuse and corruption.

From the discussions of the process it was evident that the fact that it is not documented makes it open to abuse and misuse. Focus group participants in Chief Mwanza's area also said that because the proceedings are usually conducted by the males and because all involved parties know each other, this can lead to intimidation of the accused to the extent of him or her being beaten before the case is heard. Another contributory factor to abuse is that the customary system seems at times to be intertwined with the statutory system but at others seems to operate independently of the statutory system. It means that people can use the justice mechanism to their own advantage, as the case of Chief Mushota's cow described in box 9 illustrates.

STRENGTHS

The study sought to determine the strengths of the customary criminal justice system and found it to have the following features:

- Flexibility
- Relevance: It evolves as communities evolve and therefore remains relevant to the changing circumstances in communities. The customary law can thus be more modern than the written law, particularly if one considers that there are obsolete and archaic laws on the statute book

Box 9 Senior Chief Mushota's cow

Six people in Chief Mushota's area in Kawambwa were arrested for stealing and slaughtering a cow belonging to the chief. The chief stated that he could not resolve the matter at the village council level, ostensibly since he was the victim of the theft, and accordingly opted to take the matter to the formal court. However, the true reason was that he felt that he would gain more from the formal system – which punished the guilty parties not only by jailing the guilty parties but also by demanding that they pay compensation. It is because two systems are in operation that persons such as the chief can choose the one they feel will be to their advantage. However, the end result is that people lose respect for the customary system, which has a restorative rather than a penalising nature (*Zambia Daily Mail*, 5 October 2007).

- Sense of ownership: It provides the community with a sense of ownership because of its participatory nature. The families of both the accused and the victim participate in the proceedings. They know what to expect and how to conduct themselves – the rules and procedures are known – since it is based on the law they know, and therefore the proceedings are understood by all
- Simplicity and familiarity: The language used is the vernacular of the parties concerned as opposed to English, which is not understood by all local people
- The system is based on mediation and favours decisions that are restorative. This is appropriate to the needs of the poor and tends to rebuild community relations as opposed to the formal system which has a punitive base
- Generally, the case is only finalised if all parties are satisfied. Therefore people can forgive each other and live together once the proceedings come to an end
- The system is accessible, inexpensive and speedy. There is no backlog of cases and cases are quickly and expeditiously disposed of
- Geographical proximity: Involved parties do not have to travel great distances to access the system

DISADVANTAGES

Participants noted that one of the biggest disadvantages of the customary criminal justice was enforcement of decisions, particularly as the decisions are oral and not recorded. For example, if a person is instructed to pay compensation within, say, ten days, there is little the headmen can do if he does not do so. Also, if a headman in charge of interrogating the accused is hostile, there is nobody who has the power to intervene. The system is also not resourced. Other weaknesses are as follows:

- The informality of the criminal justice system
- The ill-defined legal status: The administrators of justice can unduly influence and even exploit the system, as there are no protective instruments or actions as provided for in the formal system
- Non-codification of the customary law

- Proceedings and decisions are not recorded, making it difficult to standardise the quality of justice dispensed and monitor the substance of decisions made or observe inconsistencies
- Gender-based discrimination occurs because the system is based on traditional practices and norms which do not favour women, especially where a crime is committed by a male. According to WLSA reports, forced early marriages are considered normal and the rights of individuals like women and children are ignored in favour of tradition. So, too, defilement is not always treated as a crime in the customary justice system. A 12-year-old girl may be forced into an early marriage to a polygamist as the fifth wife, a situation that will be accepted by the system.¹⁵² Such a case underscores the abuses that are inherent in the system because it is the men who marry and it is the men who administer the criminal justice system. Because local practices are valued as are the people's opinions of what is customary in specific situations, such a case, if taken to the chief's court, will not be heard because such a practice is considered acceptable.
- Although customary law does recognise some human rights, it does not recognise international treaties, protocols and conventions. It promotes group as opposed to individual rights.

CONCLUSIONS/RECOMMENDATIONS

- Customary law is based on oral traditions and as such is subject to misinterpretations. It is therefore recommended that the system be documented
- The customary criminal justice system should be restored by restoring the position of chiefs. This should be done through government pronouncements and commitments. Part of such a process of restoration would require raising awareness and sensitisation on the importance of the customary justice system. Furthermore, records must be kept of customary tribunals and officials should receive training in basic human rights principles
- A reinstatement of customary laws and usage would provide a basis for increasing the pool of knowledge about these laws, providing a more informal basis from which a consideration of the existing status of customary law can commence
- The study has established that there is no interaction between the customary criminal justice system and the formal system. There seems to be no

exchange of information on either substantive or procedural matters. The interaction between the two systems should be encouraged

- The jurisdiction of customary courts, based on geographical as opposed to ethnic considerations, should be clarified
- The 'repugnancy clause' from the colonial era should be eliminated and replaced it with the requirement that all court decisions be made in the spirit of the Bill of Rights and Constitution of the country

7 Zambia Prison Service

LEGAL FRAMEWORK

The Zambia Prison Service was established in terms of article 106 of the Constitution of Zambia, with the following aims:

- To provide custody for prisoners
- To provide correctional services to inmates
- To manage prisons generally

The main constitutional functions are elaborated under article 107 of the Constitution, supported by chapter 97 of the *Laws of Zambia*. The Prisons Act, 1965 (Act 56 of 1965) is supported by the Prisons Rules that were drawn up in 1966 and the Prison Standing Orders of 1968. There are Prison Service Principle Guidelines which set out in some detail the service's goal statement and the overall mission of the Ministry of Home Affairs, under which the Prison Service falls.

Zambia has ratified the following conventions which establish international and regional human rights standards with regard to prisoners:

- The International Convention on the Elimination of all Forms of Discrimination against Women (1979)
- The Convention on Civil and Political Rights (1984)
- The Convention on Economic, Social and Cultural Rights (1984)
- The African Charter on Human and Peoples' Rights (1984)
- The First Optional Protocol to the International Covenant on Civil and Political Rights (1984)
- The African Charter on the Rights and Welfare of the Child (1990)
- The International Convention on the Rights of the Child (1991)
- The International Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment (1998)

The country has also signed non-binding UN instruments whose objective is to ensure that prisoners receive full access to justice:

- Standard Minimum Rules for the Treatment of Prisoners (1955)
- Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (1988)
- United Nations Rules for the Protection of Juveniles Deprived of Liberty (1990)
- Basic Principles for the Treatment of Prisoners (1990)

However, most of these instruments have not been domesticated by Zambia and hence they cannot be used to give prisoners full access to justice.

CAPACITY

The object of the Prisons Act is to provide for the establishment of a prison service to manage and control prisons. There are 53 prisons, ten medium security prisons and three remand prisons in the country,¹⁵³ as well as one reformatory school. The prisons have a capacity of 4 000 but in July 2007 they held 14 894 inmates, of whom 6 073 have been convicted and 8 164 were on remand.¹⁵⁴ There were 207 prohibited immigrants. This means that over two thirds of the prison population is on remand. The remandees are kept in overcrowded prisons and are held together with convicted criminals under inhumane conditions.¹⁵⁵

Despite the prison population growing threefold since independence in 1964, the staff complement has not increased much since that time. In 1964 it stood at 1 800 personnel and over 40 years later, it stands at 1 856.¹⁵⁶

According to the Commissioner, the Prison Service budget has been inadequate for many years.¹⁵⁷ This raises serious concerns, and it would seem that many of the problems being experienced by the Prison Service stem from a lack of financial resources to fully support the operations of the service.¹⁵⁸ One outcome has been that the service is unable to recruit adequate manpower and the ratio of staff to prisoners remains at 1:4.

OFFENDER MANAGEMENT (UNIT PROGRAMME)

The aim of the Offender Management Programme is to reintegrate prisoners into society after their release from prison. The programme bases its activities on five fundamental pillars

- The inmate care programme involves religious care, sport, recreation and HIV/AIDS awareness and focuses on the physical and spiritual development of prisoners
- Under the behaviour modification programme counselling is given to prisoners with social problems
- The main objective of the development programme is to involve prisoners in training and education and help them to acquire vocational skills
- Terminally ill prisoners, the elderly, sex offenders and prisoners jailed for drug-related offences are targeted under the special needs offender programme. It also deals with juveniles and female inmates with children
- The reintegration phase involves conditional releases and family tie-in activities as well as the provision of aftercare services

The Offender Management Unit is a special unit headed by an assistant commissioner of prisons. It is based at prisons head office and has been established to manage and implement the five pillars of the Offender Management Programme.

The success of the programme is evident from the reduction in the number of recidivism cases, which is now about 35 per cent at Mukobeko and 16 per cent at the Copperbelt prison.¹⁵⁹

PROBLEMS AFFECTING PRISON ADMINISTRATION

Overcrowding

The Prisons Needs Assessment Report of April 2004 identified prison overcrowding as one of the most serious and critical challenges facing the Prison Service. Despite an increase in the prison population and in convicted offenders, there have been only minor building extensions, resulting in prisons becoming seriously overcrowded. More specifically, the Human Rights Commission, in a 2004 inventory of Lusaka Central Prison, which was built to house 400 inmates, recorded over 1 215 inmates. Although there are signs of reduction in the number of prisoners, the prison population countrywide is still very high and prisons are still overcrowded. The prison population of Lusaka Central Prison currently stands at 994.

Appearing before the Parliamentary Committee for Legal Affairs and Governance, the Human Rights Commission director, Enock Mulembe, stated that the problem of congestion in prisons contributed to sodomy and homosexuality.¹⁶⁰

Causes of overcrowding in prisons

Inadequate infrastructure

Human rights reports from 2002 to 2005 on selected prisons pointed out that inadequate accommodation space resulting from old and unexpanded infrastructure was adding to congestion in the prisons. The director of the Human Rights Commission stressed this point when interviewed in June 2007.

The Zambia Prisons Needs Assessment Report for 2004 also highlighted lack of adequate accommodation as a critical factor accounting for congestion in prisons. In his research on causes of congestion in Zambian prisons, Chanda noted that the inadequate prison infrastructure greatly contributed to overcrowding in prisons.¹⁶¹ During the review, many participants emphasised that overcrowding is caused partly by inadequate infrastructure.

Remands and case flows

The Permanent Secretary of the Ministry of Home Affairs attributed prison congestion to delays in disposing of cases in court. He argued that if the judicial

Box 10 Remandees on expired warrants

On 19 August 2007, at Kabwe Central Police Station 11 police remandees accused and charged with murder and aggravated robbery refused to be remanded at Mukobeko Maximum Prison because their remand warrants had expired. The remandees had not been taken to court to have their cases heard and warrants extended. They argued that they refused to be detained on warrants signed in their absence because such warrants would be illegal. The remandees were addressed by their lawyer, Mulilo Kabesha of Kabesha and Co, who calmed them down and advised the police and prison officers to transport the remandees back to prison (*Sunday Post of Zambia*, 19 August 2007).

system was improved so as to speed up the conclusion of cases on remand, prisons would be less congested.¹⁶²

Two cases illustrate how poor case flow management causes overcrowding in prisons. The case of Edith Munjita, a woman with a speech disability who was facing a murder charge, had not been heard for a year because there was no sign language interpreter to help her during trial proceedings. Jeremiah Lupula Mukoshi had complained to the Human Rights Commission who visited the prison that he had been waiting for 14 years for his appeal to be heard by the Supreme Court.

Unnecessary case adjournments also cause overcrowding and result in the accused being unfairly treated. Lengthy stays in prison also lead to the manifestation of problems such as sodomy and rape.

Some remandees are kept in prison without warrants, adding to the problem of overcrowding in prisons. In its report for Central Province in 2005, the Human Rights Commission indicated that 78 remandees were kept on expired warrants at Mpima Prison and were illegally detained. The cases of about 300 of the 700 remandees at Kamwala Remand Prison had not been heard in court. Some remandees do go to court but their cases are never heard, while others do not go to court at all but simply remain in prison. Although a shortage of magistrates in some local districts increases overcrowding in prisons, the general management of cases has been and is still often slow. Not surprisingly, there have been incidents where remandees revolted against prison conditions and police authorities for detaining them on expired warrants, for example in Kabwe.

Corruption

Corrupt practices delay access to justice and low institutional capacity causes delays in the management of cases, which in turn contributes to overcrowding

in prisons. This is illustrated by the case of *Joseph Zimba v The People* that was reported by the Legal Resource Foundation's Lusaka office.

The accused was arrested on 7 October 2006 by the Drug Enforcement Commission for the illegal possession of fake dollar notes to the value of US\$4 000. He was remanded at Kamwala Remand Prison as he failed to raise the K2 million set for bail. Since the bail hearing he has not seen the inside of a court house. He alleges that officers from the Drug Enforcement Commission have demanded or solicited K2 million from him in order to close the case. Because he does not have the money, he has remained in prison.

Work stoppage and strike action

Although inmates and prison officials did not refer specifically to this, it is contended that strikes and work stoppages at courts undermine speedy access to justice for prisoners. For example, during the week ending 24 June 2007 the judiciary was on strike and only ended the strike action when the government met their demands for payment of housing allowances amounting to K3,8 billion. Because of the strike action, remand warrants were not signed and suspects remained in prison without going to court. It was a situation of justice delayed and justice denied. The Minister of Home Affairs stated that the strike by the judiciary workers delayed the delivery of justice to remandees and the whole justice system so that people were locked up for longer than necessary. The Minister observed that delayed justice violated human rights of the detainees. Indeed, any strike action contributes to the problem of overcrowding in prisons.

Lack of sleep, uniforms and food

From overcrowding in Zambian prisons flows a number of problems that impact negatively on the welfare of prisoners, with lack of sleep being one of the biggest problems facing prisoners. At both Mukobeko and Lusaka remand prisons, prisoners sleep on the floor while others have to sleep standing up. Beddings such as mattresses and blankets are in short supply in most prisons. Food is inadequate in both quality and quantity. Inmates often receive only one meal a day at 15:00 hours and only occasionally does the Prison Service manage to supply meals twice a day. Breakfast is a rare treat. The meal usually consists of *nshima* (thickened maize meal porridge) with kapenta fish or beans – not a balanced diet in any sense of the word.

The review did find that the government had initiated measures to redress the problems of both food and blankets. On 21 August 2007 the Zambian government procured 30 000 blankets for inmates countrywide at a cost of K1,1 billion. When he handed over these blankets to the Commissioner of Prisons, the Permanent Secretary for Home Affairs described the conditions in prison as pathetic since prisoners slept on the floor and in most cases without blankets. According to the Permanent Secretary the blankets were to be distributed to 13 000 inmates. The inmates were also promised 30 000 bars of soap and toiletries.¹⁶³

HIV/AIDS in prisons

Apart from tuberculosis, HIV/AIDS and other sexually transmitted diseases are the most dangerous diseases prisoners have to contend with, a situation that is exacerbated by overcrowding in prisons. The 2005 Human Rights Commission's Report for Central Province confirmed that HIV/AIDS and tuberculosis (TB) pose a great danger to the lives of prisoners.

The 1999 National Prisons Survey on HIV and AIDS risk behaviours and sero-prevalence showed that 27 per cent of inmates living in prisons were HIV positive while 15 per cent had sexually transmitted infections (STIs). In the period between 1995 and 2000, 2 397 inmates and 263 prison staff died of AIDS-related illnesses. The major risk behaviour for HIV transmission in prisons was identified as unprotected sex between male inmates (sodomy), tattooing, sharing of needles during drug use, and sharing of shaving instruments.

This study found that the Zambia Prison Service has an elaborate HIV/AIDS and STI/TB workplace policy whose main objective is to prevent transmission of HIV/AIDS and other infectious diseases. The policy outlines the rights and responsibilities of prison officers and inmates in relation to HIV/AIDS in order to live up to the department's vision of a prison service free from the threat of the disease. It covers members of staff and their families, as well as inmates. The Director for International Relations and Corporate Affairs confirmed that about 102 inmates were receiving antiretroviral therapy. The Prison Fellowship, an NGO, is also facilitating peer education and HIV/AIDS counselling to inmates.

The Prisons Act was amended in 2004 to introduce a medical health care programme for inmates and staff. Section 16 of the Act provides for the establishment of a prison health service to provide and administer health care. Under section 16A(1) the Commissioner of Prisons is empowered to appoint a director of health

on the advice of the Minister of Health. The director is responsible for the efficient and effective day-to-day administration of the Prison Health Services. Section 17A(1) of the Act empowers the Commissioner of Prisons to appoint medical officers for each prison to cater for the health of prisoners. Arrangements were being made to employ a medical doctor and staff at the time of this review. In the meantime, critically ill prisoners are attended to at government clinics and hospitals.

While the HIV/AIDS pandemic has been acknowledged as a serious health problem in Zambian prisons, prison clinics lack the necessary drugs. Some prisons do not even have clinics where inmates can be treated (see box 11).

Funding

The Zambia Prison Service has historically had to contend with low funding levels from government. The problem of underfunding cuts across the

Box 11 Prisons and HIV/AIDS drugs

- On 9 March 2007 Superintendent Patrick Nawa reported to Justice Rhoda Kaoma that prisoners in some prisons in Southern Province who were on antiretroviral therapy were not receiving food packs to supplement their daily meals. Mr Nawa stated that there was a shortage of food and drugs at Choma Prison because the supplier failed to deliver the required food and drugs (*Times of Zambia*, 14 August 2007)
- At the opening of the criminal session for Kitwe on 13 August 2007 the officer-in-charge at Kamfinsa Prison, Mr Wilson Mbewe, told Judge Evans Hamaundu that there were no drugs in the clinic at Kamfinsa (*Times of Zambia*, 14 August 2007)
- A sick prisoner named Denis Liwanga, remanded at Mongu State Prison, appealed to the Legal Resource Foundation to help him get out of prison. Mr Liwanga told Mongu paralegal Joe Mulafulafu that he was very sick and could not walk. He had contracted tuberculosis while in the prison in 2005 and had been admitted to hospital on several occasions. Mr Liwanga was arrested with two others in April 2002, and charged with murder. Liwanga said that his case had been due to appear before the High Court in August 2006 and a *nolle prosequi* was entered. After his release he was re-arrested and had to appear before the Subordinate Court. Mulafulafu reported that he visited Liwanga in prison on 17 July 2007 and was told that his case had been moved to the High Court. However, there seems to be no record of his case at the High Court. The LRF lawyer, Paul Mulenga, was studying the case to determine how Liwanga could be assisted (*The Legal Resources Foundation News* 98, July 2007)

mainstream prison administration and is the root cause of many problems in the Prison Service. The shortage of financial resources impacts adversely on the condition of prison facilities, including medical care facilities, and the provision of basic necessities such as food, bedding and uniforms. The maintenance of prison buildings and the sanitation system cannot be undertaken due to a lack of financial resources. In the 2006 financial year, K35,8 billion was allocated to the Prison Service for all its activities. In 2007, the allocation was reduced to K34,1 billion. This is a small budget, considering the size of the Prison Service and number of prisoners in the country.

The lack of funding has had a particularly severe impact on transport, affecting such basic activities as transporting remandees to court and collecting firewood. In its report for Central Province for 2005 the Human Rights Commission noted that Kabwe Medium Security Prison had been without transport since 1989. The report also commented that the prison had no blankets and mattresses because of poor funding. Lack of adequate funding has also affected training and recruitment of staff.

Treatment of women in prison

In the Prison Service, all prisoners are classified at the time of admission in accordance with section 60(1) of the Zambia Prisons Act of 1965 as male and female prisoners. The Act further provides that they should be lodged in separate prison accommodation. With regard to the treatment of female prisoners, the Act among others contains the following provisions:

- Female prisoners must be supervised by female prison officers
- Female prisoners should be kept separate from male prisoners
- Female prisoners should be allowed visitors or relations in addition to receiving letters from their children. Pregnant female prisoners should be provided with ante-natal and post-natal care, as well as baby clothes and other necessities, at government expense
- Female prisoners with infants should be allowed to keep their infants with them in prison until they are four years old

The custody of women prisoners in Zambia accordingly presents special problems for prison administrators, although they constitute only a small number of

the prison population. In fact, in 2004 there were only 375 female prisoners or 3 per cent of the whole prison population.¹⁶⁴

The main problem is that most prisons in Zambia were built for males only and do not have facilities for accommodating females. In a report on the prison and police cells visits by the Human Rights Commission for Lusaka Province of 24 June 2004, the commission reported that it had found mothers with infants as young as two days old at Lusaka Central Prison sharing facilities with other inmates. A similar situation was reported by the Human Rights Commission in its 2005 report on the Central Prison where seven children and their mothers were sharing facilities with other female inmates.

Authorities such as the Deputy Director for Public Relations acknowledge that female inmates - particularly those who are pregnant or who have young children - face particular difficulties in prison. However, a lack of funding makes it impossible to provide facilities and services as set out in the legislation.

Children/juveniles in conflict with the law

The appropriate detention of children in conflict with the law is provided for in a number of conventions. The UN Guidelines for the Prevention of Juvenile Delinquency (adopted by the UN in Riyadh, Saudi Arabia, in 1988) and the Beijing Rules (adopted in 1985) provide for fair and humane treatment of such children. A basic provision of the UN Standard Minimum Rules for the Treatment of Prisoners is that children should be separated from adults and should receive the necessary care, protection and assistance. Article 17 of the African Charter on the Rights and Welfare of the Child states that: 'Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth ...' Zambia has also ratified the UN Convention on the Rights of the Child, although its provisions have not been domesticated.

Human rights provisions are set out in Part III of the Constitution of Zambia, which explicitly acknowledges that children are expected and are in fact entitled to enjoy the full range of rights contained in the National Bill of Rights. In particular, children have a right not to be tortured or to be subjected to degrading or inhumane treatment.

However, in its visits to Zambian prisons the Human Rights Commission found many incidents of juvenile prisoners sharing cells with adult prisoners.¹⁶⁵

The commission also reported that the juvenile prisoners are ill treated and often indecently assaulted, thus violating their human dignity. Clearly, the lack of adequate prison facilities for children who are in conflict with the law or who are in prison with their mothers exacerbates the situation.

In a visit to Mukobeko maximum prison in Kabwe in April 2006, the Minister for Central Province, Mr Sydney Chisanga, found that ten juvenile convicts were sharing cells with hardcore convicted prisoners. During the Minister's tour of the prison an inmate by the name of Chimbala noted the following complaints:

- The poor diet – the prisoners were fed mainly beans for months on end
- Inmates had not received breakfast rations for about seven months
- They received only one meal per day
- There were numerous cases of tuberculosis and HIV/AIDS
- Prison staff were demanding that prisoners pay K4 000 for X-ray services¹⁶⁶

Cruel and inhuman treatment of inmates

According to an ex-prisoner who spent four years at Mukobeko prison, prisoners are sometimes beaten and treated cruelly. However, these incidents are normally not reported to higher prison authorities, or where incidents are in fact reported, no action is taken. The following incidents reflect the cruel treatment experienced by some of the prisoners:

- Paul Kaputu was sentenced to 18 months' imprisonment at Milima Prison, Kasama. On the first day he was tortured by a prison officer after being accused of attempting to escape and was whipped with a sjambok. The prisoner sustained a fractured knee and had to be transferred from Kasama to Lusaka for specialist treatment at the University Teaching Hospital
- In 2004 prisoner Mbita, in the company of other inmates, was taken to Mungulube open air prison. He reminded the warder that he needed treatment at Mansa hospital. The warder refused to grant Mbita permission to receive treatment and they quarrelled. The warder then beat Mbita with a steel hoe handle so that he sustained a fractured backbone. The warder had to pay Mbita compensation of K1 million¹⁶⁷
- A prison warder named Moffat Chifwele from Chondwe open air prison in Ndola appeared in the Ndola magistrate's court after being charged with

grievous bodily harm for beating Davies Nyirenda, a convict. Chifwele used a stone to pummel Nyirenda to the extent that the latter – who was accused of attempting to escape from custody – is now confined to a wheelchair. Nyirenda was released from prison by presidential pardon.¹⁶⁸

- On 12 June 2007 the chairperson of the Human Rights Commission reported that prisoners were being tortured at Mufulira Prison in the Copperbelt. In one case a prisoner had been beaten with a hoe handle and dirty water was poured over him. The prisons authorities denied that the incident occurred and accused the Human Rights Commission of misrepresentation

Despite denials the Human Rights Commission has found many cases of ill treatment of prisoners and of prisoners who were deprived of their rights. Furthermore, the former Commissioner of Prisons was concerned about allegations of torture at Mufulira Prison and instituted a high-level team, headed by himself, to investigate the matter. The findings had not been published at the time of writing of this report.

Sishekano Lubinda, a prisoner serving a sentence for aggravated robbery who participated in this review, said that the attitude of some officers towards prisoners is oppressive. He suggested that prison officers should be educated on human rights so that they regard inmates as fellow human beings.

Abuse, degrading and shaming of prisoners in public

There have been widespread reports of abuse of prisoners, especially in North-Western Province where prisoners are forced to dance in public to entertain people. In May 2007 the Permanent Secretary for North-Western Province directed the Prison Service in Kabompo to stop using prisoners to entertain members of the public by dancing in Makishi costumes. As some of these prisoners had never even been to a mukanda ceremony, this practice constituted a serious cultural offence against the Luvale people of North-Western Province.

The President also directed the Prison Service not to abuse prisoners by using them to work in vegetable gardens and fields or perform manual work at officers' homes. The President had received reports that officers were abusing prisoners by using them to work on their private fields and gardens instead of government prison fields. Although agricultural production is part of a

programme to impart skills that prisoners can use when they were released, this practice amounts to abuse of prisoners and violation of their rights.

Access to justice and representation

The right to legal advice and representation was previously enshrined in the Judges' Rules and has recently been acknowledged as a right in common law. In terms of the Constitution of Zambia the right to legal representation is a fundamental human right.

According to the majority of the inmates they had no problem speaking to their lawyers but courts delayed their cases on appeal or even at the trial stage. Some inmates felt that inmates who committed minor offences such as shoplifting should be sentenced to community service or non-custodial sentences. In their view this would help decongest prisons.

Contact with the outside world

The review found that relatives, friends and well-wishers are normally allowed to visit inmates, especially over weekends. The inmates are also allowed to receive food or such necessities as soap or plates from relatives or visitors. In the majority of cases, the inmates are allowed to write and receive letters from friends and relatives, although all such communications are monitored for security reasons. According to one inmate, the only ones who do not receive or write letters are those who have no money or no relatives or friends to visit them.

Recent developments

It is important to note that while the Zambia Prison Service faces many significant challenges that undermine its efficiency, there have been positive developments with a view to resolving some of the difficulties.

Uniforms

In the 2006 budget for prisons, the government allocated K8 billion to procure uniforms for prisoners and staff. The South African Department of Correctional Services also donated uniforms for prisoners and gardening tools to the value of K1,7 billion.¹⁶⁹ Kenya also donated special uniforms for officers, tailored to

the measurement of each officer with his/her name printed on the uniform. The commissioner stated that these uniforms would be worn at Prison's Day celebrations and pass-out parades. The researchers paid five visits to the Lusaka Central and Kamwala prisons and on the last visit, on 20 September 2007, found that prisoners were wearing new green uniforms.

Agricultural output

Agriculture is a major activity in the Prison Service and many inmates participate in this programme as a way of acquiring skills they would be able to use upon their release. Agricultural farm produce can be used as food for prisoners. This would improve the nutritional value of their diets and afford them three meals as opposed to one meal per day. The Prison Service's vision states that it aims to be self-sustaining in agriculture to eliminate hunger in prisons and reduce dependence on the National Treasury. To this end it continues to organise activities that allow inmates to produce their own food.

Transport

Political will has emerged that reflects a shift in policy emphasis on the resolution of problems affecting the Prison Service. On 21 September 2007 the government, through the authority of the President, released about K17 billion to purchase various items required for prison administration. These included cargo trucks, utility vans, buses, ambulances, speed boats, irrigation systems and uniforms. These funds were allocated from outside the normal prisons' budget.

The shift in policy in favour of the Prison Service is in line with the aspirations of the government policy outlined in the Fifth National Development Plan aimed at improving the working environment of the Prison Service by 2010.

The findings of this study indicate that that government has also begun to improve transport facilities of the Prison Service, as the following examples indicate

- When a researcher visited Lusaka Central Prison on 13 June 2007 two trucks were parked outside the prison waiting to convey prisoners to court and for other errands
- A 20-seater boat costing K92 million had been bought and delivered to Kalabo Prison. The officers used to pay K20 000 to private boat owners to travel to Mongu to obtain food for prisoners

- On 17 June 2007 the Commissioner of Prisons distributed six ambulances to regional commanders, including Katombora Reformatory. Some staff cars were bought and distributed to commanders and other senior officers
- Farming equipment in the form of irrigation pumps and tractors were delivered to Mwembeshi and other prison farms

However, the transport situation is still inadequate, especially because big stations such as Lusaka Central Prison and Kamwala, which have a workforce of about 2 063 including support staff, have no utility vehicles. According to the inmates it is for example difficult to arrange transport to hospital for treatment.

CONCLUSION

The Prison Service currently faces challenges ranging from overcrowded prison accommodation, shortages of manpower and a lack of advanced training (especially in management and human rights) to insufficient food, health facilities, transport for prisoners and in some cases staff clothing and security for prison buildings. Facilities for women and juveniles are also inadequate.

The Zambian Prison command appreciates the magnitude of the problems faced by the Prison Service. It has therefore developed a vision to make the service 'the best provider of custodial and correctional practices and be self-sustaining in agricultural and industrial production'. The Service has formulated guidelines that reflect its obligation to respect the rule of law. Political leaders have shown political will to resolve many of the problems confronting the Prison Service. The master plan strategy for the Zambia Prison Service, when set within the context of the Fifth National Development Plan and Vision 2010, does add value to prison development.

In an attempt to alleviate problems caused by overcrowding, the focus has shifted to the rehabilitation of prisons. Kitchens and ablutions facilities have been refurbished in prisons such as Kabwe and Kamfinsa. Another effort to improve overcrowding has been the establishment of open air prisons in Lusaka and Western provinces in 2004. Unfortunately, the highest prison population consists of remandee prisoners, who form 50 per cent of the prison population of some 13 500, and they cannot be retained in open spaces. Illegal immigrants are also no longer imprisoned but now receive special temporary permits.

Efforts are made to engage prisoners productively in farming activities to supplement their food requirements. Some efforts are made to separate juveniles from adults and where there are no female detention facilities, female suspects are placed on police bond.

With regard to the handling of the Prison Service, the government rightly acknowledges its problems in meeting the constitutional, national and international standards. For instance, death row inmates can be imprisoned for up to 20 years without knowing when they are scheduled for execution. These delays are attributed to financial constraints and low technical and human capacity.

RECOMMENDATIONS

Build new prisons

It is recommended that three prisons (one each for males, females and juveniles) be built to alleviate overcrowding in prisons. Prisons are so overcrowded that it is difficult to observe the United Nations Standard Minimum Rules, which require that prisoners be given reasonable comfort and humane treatment. The new prisons should take into account special needs of women and children.

This recommendation has the support of members of the Zambia bench. For example, when opening a High Court session in North-Western Province in May 2007, Justice Lloyd Siame said that new prisons had to be built or existing structures renovated as a way of decongesting prisons. The judge stated that cells that were meant to accommodate ten inmates were in effect accommodating 65 prisoners. He concluded that the situation was ‘inhuman’ and that it was ‘unhealthy to have prisoners packed in one cell’. At a state house ceremony to swear in the newly appointed Commissioner of Prisons, the President said he was concerned about overcrowding in prisons and stressed that such a situation amounted to a human rights abuse. He added that accommodating 1 000 prisoners in a prison meant for 100 inmates amounted to a violation of the rights of prisoners.

Constitutional pardons

In August 2007 President Leve Manawasa pardoned 823 prisoners. This pardon reflected well on the promise President Manawasa made when touring the

Mwembeshi prison farms, namely that he would take revolutionary measures to deal with the problem of overcrowding in prisons. It is recommended that the new President also use his powers under article 59 of the Constitution to pardon deserving prisoners as a way of decongesting prisons.

Agriculture

It is recommended that the agricultural endeavours of the Prison Service be encouraged and financially supported by government and donors in order to grow more maize, vegetables and other crops for inmates. Over the years the Prison Service has been able to increase its yields in agricultural production. Even higher yields would enable the service to provide three meals a day with good nutritional value, which would be to the benefit of particularly HIV-infected prisoners. The prison ranches and fish ponds could be used to improve the protein intake of prisoners. The right of prisoners to adequate food and a balanced diet would thus be greatly enhanced. If the Prison Service was able to feed itself it would save the state about K12 billion that is currently spent on prisoners' rations.

Women and juveniles

It is recommended that the Minister of Home Affairs use powers vested in him under section 3(1) of the Prisons Act to declare a suitable building a prison for female or juvenile inmates. It is obvious that most prisons in Zambia were built without considering the special needs of women and children. These are two categories of prisoners who are mostly vulnerable to human rights abuses and therefore need special care. The interests of child prisoners can best be served when they are separated from adult prisoners.

Training

It is recommended that training in human rights law receive priority attention. This will help mitigate the abuse and harsh treatment of prisoners by warders. It is important to appreciate that skills and professional development training is critical to the development of a professional core of officers in the service, who will interpret the Prisons Act to the benefit of prisoners. Leadership training should equally receive priority and senior officers should participate and receive

training in leadership and management courses, too, to enable them to manage human and financial resources for the benefit of inmates. The ultimate goal is to achieve a change in the mindset to one of accountability.

Financial and human resources

The government should be encouraged to increase financial and budgetary allocations to the Prison Service to enable the service to purchase blankets, mattresses and utensils for inmates. Increased funding would help the service to recruit extra manpower and promote deserving officers and offer refresher courses and other skills development activities to build a professional prisons service which would uphold respect for the rule of law.

Prisoner health

The Commissioner of Prisons should prioritise the appointment of a medical doctor and medical support staff to take care of the health of inmates, and oversee the implementation of the health care programme in the Prison Service. The service should ensure adequate antiretroviral treatment for HIV-infected inmates. The delivery of health care services should take into account the special needs of children and ensure ante-natal and post-natal care for women. Prisoners should be afforded an opportunity to enjoy the highest attainable standard of health in compliance with the right to health.

National parole board

It is recommended that a national parole board be established in accordance with section 113A of Act 16 of the Penal Code 2003, which should speed up recommendations for the release of deserving prisoners, especially those incarcerated for minor offences. The parole system would help to decongest prisons.

Non-custodial sentencing policy

It is recommended that the judiciary be encouraged to apply non-custodial sentencing in respect of petty and minor crimes to help decongest prisons.

High poverty levels, as in Zambia, are associated with high levels of crime and prisons accommodate many petty crime offenders who should rather be sentenced to community service in accordance with the Prisons (Amendment) Act, 2000 (Act 14 of 2000). A non-custodial sentencing policy would support the view that long custodial sentences are not conducive to prisoner reform, while shorter sentences give prisoners the opportunity to rejoin society.

Establishment of a legal department

It is recommended that the prisons high command set up a legal department at its head office to monitor the observance of human rights and implementation of the UN Minimum Standards and other conventions related to the treatment of prisoners. It should also oversee training in human rights by staff members. Such a legal department would also monitor the movement of remandees to court and ensure that no one is detained without a warrant or with an expired warrant.

Prisons ombudsman

It is recommended that government consider setting up a prisons ombudsman to deal with the wider issues of human rights abuses in prisons.

The improvement of standards of justice within prisons is a core function of prison services the world over. It is therefore important that prisoners should know why a decision which may have a material adverse effect on them has been taken or is being taken. This is essential to achieve satisfactory relations between prisoners and their guards. If a prisoner feels that he has a genuine grievance he should have access to a grievance procedure which has some degree of independence to hear the matter.

Such a prisons ombudsman would receive, hear, investigate and pronounce on complaints by individual prisoners on their treatment and general welfare. This institution would add value towards improving respect for human rights in prisons and make the Prison Service management more accountable. In the process it would help to prevent adverse actions on the prisoners. The prison ombudsman would ensure that justice and respect for human rights in respect of prisoners are upheld.

Comprehensive master strategy

A comprehensive master plan should be instituted for the Prison Service to ensure that problems with which the service has to contend are dealt with in a comprehensive manner. The plan would operationalise the mission statement, which has as its main goal:

To effectively and efficiently provide and maintain humane custodial and correctional services to inmates and to increase industrial production in order to contribute to the well-being and reform of inmates and maintenance of internal security.

8 Regional and international conventions and protocols

REGIONAL PROTOCOLS ZAMBIA HAS SIGNED

This section presents and discusses regional protocols and agreements Zambia has signed and ratified, as well as regional organisations it belongs to and the ones to which it should belong. It also shows protocols and agreements Zambia must ratify. Next international protocols and treaties signed by Zambia and those it needs to ratify are presented. It also shows international organisations that are aimed at combating crime and mitigating its impacts and that are likely to stabilise the country's internal security and that the country should join for that reason.

Zambia is an active member of the AU and also belongs to several other continental organisations. The regional protocols and agreements Zambia has signed and ratified dealing with crime, security and law enforcement are presented in table 11.

Table 11 shows that Zambia has signed several regional protocols and treaties aimed at fighting crime. However, the country is still at various stages of processing the regional protocols that it has decided to ratify and implement. Out of 15 regional protocols that Zambia has signed in this category, only 6

Table 11 Regional treaties and protocols signed by Zambia

Treaty/Protocol	Signed	Ratified	Accession	Entry into force
SADC				
Protocol on Combating Illicit Drugs	24/08/1998	30/10/1998		20/03/1999
Protocol on Politics Defense and Security Cooperation	14/08/2001	–	–	02/03/2004
Protocol on the Control of Firearms, Ammunition, and other related Materials in SADC	14/08/2001	16/1/2003	–	08/11/2004
Protocol against Corruption	14/08/2001	08/07/2003	–	06/07/2005
Protocol on Extradition	24/08/2003	20/08/2004	–	–
Protocol on Mutual Legal Assistance in Criminal Matters	24/08/2003	–	–	–
Mutual Defence Pact	26/08/2003	–	–	–
Charter of Fundamental Social Rights	26/08/2003	–	–	26/08/2003
Organisation of African Unity/African Union				
African Charter on the Rights and Welfare of the Child	28/02/1992	–	–	–
African Charter on Human and Peoples' Rights	17/01/1983	10/01/1984	–	02/02/1984
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	09/06/1998	–	–	–
Protocol Relating to the Establishment of the Peace and Security Council of the African Union	09/07/2002	04/07/2003	–	07/07/2003

Treaty/Protocol	Signed	Ratified	Accession	Entry into force
African Convention on Preventing and Combating Corruption	03/08/2005	–	–	–
OAU Convention on the Prevention and Combating of Terrorism	03/08/2005	–	–	–
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	03/08/2005	–	–	–
AU Non-aggression and Common Defence Pact	–	–	–	–

Source Compiled by the Ministry of Justice, Department of International Law and Agreements, July 2007

have been ratified. This could be interpreted as a lack of commitment by Zambia because some of the protocols and agreements not yet ratified had signatures appended as far back as 1992 and 1998.

The table also shows the time it took the country to sign some of these protocols. For instance, the SADC Protocol Against Corruption which Zambia signed in August 2001 was only ratified almost two years later, in July 2003, while the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials in SADC was signed in August 2001 and only ratified in January 2003.

Delays in signing and/or ratifying protocols and treaties have led to situations where several important treaties have been signed by some states, but cannot be put into force because a quorum is lacking. This generally occurs when several states who have already signed the document have not yet ratified it. For instance, although Zambia signed the SADC Protocol on Extradition, which is critical in the fight against crime, in 2003 and ratified it a year later, the protocol has not yet entered into force because many SADC member states have not ratified this instrument.

The country's capacity and efficiency in processing regional protocols need to be enhanced. Furthermore, the slow or poor responses from the relevant ministries, especially the Ministry of Foreign Affairs, with regard to requests for information on protocols and treaties do not make the best impression. Yet

the country deserves a high rating, given its highly active role in the sub-region and Africa.

OTHER REGIONAL TREATIES AND PROTOCOLS THAT ZAMBIA SHOULD RATIFY

Apart from the treaties and protocols that Zambia has ratified or that are at various stages of being processed, there are other important treaties and protocols dealing with crime, law enforcement and internal security where the country would benefit from ratification. These protocols are listed below:

- Protocol to the OAU Convention on the Prevention of and Combating Terrorism (1999)
- Declaration and Plan of Action on Control of Illicit Drugs Trafficking and Abuse in Africa (2002)
- The African Union Non-Aggression and Common Defence Pact (2005)
- The Kampala Declaration on Prison Conditions in Africa (1996)
- The Nairobi Declaration on Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (2000)

INTERNATIONAL TREATIES ZAMBIA HAS SIGNED

Apart from the need to collaborate and cooperate with regional institutions dealing with security, crime and law enforcement, Zambia also needs support from international organisations outside the African continent. It is therefore not surprising that Zambia is a member of the UN as well as several other international organisations. According to the Department of International Law, Treaties and Agreements of the Ministry of Justice, Zambia has signed several international conventions/protocols. The conventions dealing with security, crime and law enforcement to which Zambia is a participant and/or signatory and deposited with the Secretary General of the United Nations are set out in table 12.

Table 12 shows that Zambia is a participant and signatory to 24 international conventions/ protocols related to the fight against crime and security. These instruments are currently at different stages of being processed. However, the table also shows that Zambia has not completed the processing of a number of important conventions and protocols on which it has sent notification to the

Table 12 International conventions and protocols ratified by Zambia

Treaty/Protocol	Action	Date			Status
		Notification	Receipt	Registration	
Convention on the Political Rights of Women	Acceded to	04/02/1972	04/02/1972	04/02/1972	Registered
International Opium Convention	Acceded to	09/04/1973	01/04/1973	01/04/1973	League of Nations
Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs	Acceded to convention as amended	09/04/1973	09/04/1973	-	For information
Protocol bringing under International Control Drugs outside the Scope of the Convention of 13/07/1931 for Limiting Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success, New York on 11/12/1946	Acceded to	09/04/1973	09/04/1973	09/04/1973	Registered
International Convention on the Suppression and Punishment of the Crime of Apartheid	Acceded to	14/02/1983	16/06/1975	16/06/1975	Registered
International Covenant on Civil and Political Rights	Acceded to	10/04/1984	09/04/1984	10/04/1984	Registered
Optional Protocol on the International Covenant on Civil and Political Rights	Acceded to	10/04/1984	09/04/1984	10/04/1984	Registered
Convention on the Rights of the Child	Signed	06/12/1991	06/12/1991	06/12/1991	Registered
Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961	Participated*	13/05/1998	13/05/1998	13/05/1998	Registered

Continued from page 169

Treaty/Protocol	Action	Date			Status
		Notification	Receipt	Registration	
Protocol Amending the Single Convention on Narcotic Drugs, 1961	Acceded to	13/05/1998	13/05/1998	13/05/1998	Registered
Amendment to article 43(2) of the Convention on the Rights of the Child	Accepted	09/08/2000	09/08/2000	18/11/2002	Registered
United Nations Convention against Corruption	Signed	11/12/2003	11/12/2003	-	Signatory
Protocol against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations against Transnational Organised Crime	Acceded to	24/04/2005	24/04/2005	03/07/2005	Registered
United Nations Convention against Transnational Organised Crime	Acceded to	24/04/2005	24/04/2005	24/04/2005	Registered
UN Convention on the Prevention and Combating of Crime	Signed	03/08/2005			
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	Signed	-	-	-	-

* Participated by virtue of ratification, accession or succession to the Protocol of 25/03/1972 or 1961 Convention after the entry into force of the Protocol

Source Republic of Zambia, Ministry of Justice, Protocols and conventions ratified by the Government of the Republic of Zambia, Department of International Law and Agreements, 2007 Lusaka

United Nations. For example Zambia has not yet signed the UN Convention Against Corruption, despite sending notification of interest in this protocol to the UN on 11 December 2003. There other treaties and conventions which Zambia has not yet signed either.

In other cases Zambia has signed international treaties and conventions, but has not yet ratified them. These include the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Single Convention on Narcotic Drugs (1961), and there are others in the same category which cannot be fully processed because they have not been ratified. In order to obtain the benefits accruing from these treaties and protocols, Zambia needs to ratify them. As in the case of regional protocols and treaties, Zambia seems to lack the capacity to process these important protocols and conventions in a timely manner, if at all.

INTERNATIONAL CONVENTIONS AND PROTOCOLS THAT ZAMBIA SHOULD RATIFY

Although Zambia is currently processing various international protocols and conventions related to crime and law enforcement, there are a number of other conventions and protocols that the country should ratify as a matter of urgency. These are listed below:

- UN Standard Minimum Rules for the Administration of Juvenile Justice (A/RES/40/33 – Beijing Rules, 1985)
- Protocol to Prevent, and Suppress and Punish Trafficking in Persons, especially Women and Children (A/RES/55/25 annex 11, 2000)
- Protocol against Smuggling of Migrants by Land, Sea and Air (A/RES/55/25 annex 11, 2000)
- Conference on Security, Stability, Development and Cooperation
- UN and AU anti-corruption codes
- Universal Declaration on Human Rights (A/RES/217 A (III), 1948)

The ratification of these conventions and treaties will without a doubt benefit the country's fight against crime and improve the security and law enforcement situation. It will be complimentary to the benefits derived from the existing protocols and conventions as well as those still being processed.

PARTICIPATION IN ACTIVITIES OF LAW ENFORCEMENT ORGANISATIONS

The government of the Republic of Zambia realises that the fight against crime is an international one and that to succeed it needs to cooperate with other countries and organisations that have experience and expertise in this area. Furthermore, these countries may have evidence about criminal activities committed by the same suspects that the country may be investigating or prosecuting. For this and other reasons, Zambia belongs to and participates in meetings of the organisations that fight crime, deal with security issues and issues such as narcotic drugs and psychotropic substances, human rights violations and corruption. The organisations of which Zambia is a member include the following:

- Southern African Regional Police Chiefs Cooperation Organisation (especially on matters relating to control of drugs)
- African Heads of Narcotic Law Enforcement Agencies
- AU Drugs Desk in Addis Ababa, Ethiopia: Zambia played an influential role in establishing the desk
- United Nations Development Programme: Zambia participates actively in their activities, addressing problems relating to illicit narcotic drugs and psychotropic substances
- Interpol
- Indian government: In 1993, Zambia signed an agreement with India for the exchange of information on drug trafficking trends through designated national agencies. At that time India was the main supplier of the mandrax and heroin that was entering Zambia
- International Labour Organisation and World Health Organisation: Zambia collaborates with these organisations on drug prevention education and workplace interactions
- Regional drug enforcement agencies: Through the DEC Zambia collaborates with drug enforcement units of several other countries in the region, especially those from Kenya, Uganda, Ethiopia, Malawi, Lesotho, Tanzania, Swaziland, Mauritius, Botswana, Namibia, Zimbabwe and South Africa

Although it has not ratified all the protocols, Zambia is an active member and participates in the activities of other regional and international organisations

and agencies involved in crime and law enforcement. Through institutions such as the Zambia Police Service, Drug Enforcement Commission and Anti-Corruption Commission, Zambia enjoys support of regional and international communities in its efforts to fight crime, corruption, drug abuse and trafficking in narcotic drugs and psychotropic substances.

At the regional level, Zambia is credited as being among the first countries in the Eastern and Southern African regions to establish an independent, autonomous and professional organisation with the primary aim of fighting the drug problem and money laundering. It was therefore not surprising that Zambia is reported to have played an active role in the setting up of a drug desk at the AU Headquarters in Addis Ababa, Ethiopia.

Membership of these professional organisations dealing in crime and law enforcement enhances the country's capacity for networking and exchanging ideas and information on crime and crime prevention. It also facilitates bilateral arrangements for apprehending and even extradition of criminals and enhances its efficiency and effectiveness in fighting sophisticated criminal activities.

RECOMMENDATIONS

The outcome of the study indicates that Zambia needs to undertake major reforms in its criminal justice system to enhance efficiency and effectiveness. Many important protocols in this area have not yet been ratified, while the country's capacity to process these instruments seems to be inadequate. In addition, not all the signed instruments have been ratified and a further weakness in Zambia's capacity to process these instruments is the country's failure to domesticate some of the ratified treaties. While the positive impact of ratifying these instruments cannot be questioned, it should be emphasised that domestication is critical. Unless the instruments are domesticated, the country will be unable to prescribe and impose penalties on offenders irrespective of where the crime has been committed, as the instruments would not be part of the laws of the land.

Notes

- 1 The APRM is an instrument voluntarily acceded to by member states of the African Union (AU) as a self-monitoring mechanism. The primary purpose is to foster the adoption of policies, standards and practices that lead to human security and political stability, high economic growth, sustainable development, and accelerated regional and continental economic integration.
- 2 J I Mwanje, *Qualitative research process*, Addis Ababa: Organization for Social Science Research in Eastern and Southern Africa (OSSREA), 2001, 17–18.
- 3 Muna B Ndulo and Robert B Kent, The Constitution of Zambia, *Zambia Law Journal* 30 (1998), 11.
- 4 Ibid, 13.
- 5 Ibid, 16.
- 6 Ibid.
- 7 Republic of Zambia, Government White Paper 1 of 1995.
- 8 Ndulo and Kent, The Constitution of Zambia, 23.
- 9 Ibid, 24.
- 10 Republic of Zambia, Commission on Legal Empowerment of the Poor, Draft Working Group 1, Access to justice and the rule of law meeting, July 2007.
- 11 Ibid.
- 12 Ibid.
- 13 Ibid.
- 14 Zambia is a dualist state, which means that a treaty only becomes binding as domestic law once Parliament has passed a special enabling statute enacting the treaty as part of ‘municipal’ (internal) law. This is referred to as ‘domestication’. In a strict sense, Zambia has so far not domesticated any of the international human rights treaties. However, the government has adopted the National Capacity-Building Programme for Good Governance, which prioritises constitutionalism and human rights and acknowledges the problems created by the

lack of domestication. It states that 'Zambia is working at the possibility of incorporating International treaties and instruments, to which Zambia is a party, into domestic law'.

- 15 As this was not a nationally representative survey, results cannot be extrapolated to the rest of the country.
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- 28 Ibid.
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- 30 *Sunday Times of Zambia*, 26 August 2007.
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- 32 Interviews and *The Post*, 16 May 2007.
- 33 F E Jansen and G J N Bruinsma, Policing organized crime: a new direction, *European Journal on Criminal Policy and Research* 5(4) (1997), 85–98.
- 34 Ibid.
- 35 The FBI defines organised crime as activities by any group which has some formalised structure and whose primary objective is to obtain money through illegal activities. Such groups

maintain their position through actual or threatened violence, corrupt public officials, graft or extortion, and generally have a significant impact on the people in the locales, region or the whole country in which they operate.

- 36 L Saboi, The role of the Drug Enforcement Commission, Paper presented at a workshop on Fighting Crime in Zambia held at the Intercontinental Hotel in Lusaka, Zambia, 2006.
- 37 See full report by Amnesty International Zambia, Applying the law fairly or fatally? Police violations of human rights, 2008, <http://www.amnesty.org/en/library/info/AFR63/001/1999> (accessed January 2008).
- 38 See the Zambia Police Reserve Act, 1950 (Act 45 of 1950), as amended. Also see the Zambia Police Reserve Act, *The Laws of Zambia* 9, 1996 edition (revised).
- 39 T Carothers, *Promoting rule of law abroad*, Washington: Carnegie Foundation, 2006.
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- 51 Ibid.
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- 95 Patrick Matibini, Access to justice and the rule of law, Issue paper presented to the Commission on Legal Empowerment of The Poor, undated, <http://www.undp.org/LegalEmpowerment/reports/> (accessed 17 September 2007).
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 - (a) to advocate the desirability of overthrowing by unlawful means the Government as by law established; or
 - (b) to bring into hatred or contempt or to excite disaffection against the Government as by law established; or
 - (c) to excite the people of Zambia to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Zambia as by law established; or
 - (d) to bring into hatred or contempt or to excite disaffection against the administration of justice in Zambia; or
 - (e) to raise discontent or disaffection among the people of Zambia; or
 - (f) to promote feelings of ill will or hostility between different communities or different parts of a community; or

- (g) to promote feelings of ill will or hostility between different classes of the population of Zambia; or
- (h) to advocate the desirability of any part of Zambia becoming an independent state or otherwise seceding from the Republic; or
- (i) to incite violence or any offence prejudicial to public order or in disturbance of the public peace; or
- (j) to incite resistance, either active or passive, or disobedience to any law or the administration thereof

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- 112 Kaela, *National governance baseline survey report*, 6–7, 81–85.
- 113 Ibid.
- 114 WLSA Zambia, *Justice in Zambia: women and the administration of justice*, Lusaka: WLSA Research Trust, 1999. The latest figures were not available at the time of writing this report.
- 115 German Technical Cooperation Agency, *Training for local court justices and messengers conducted country wide from 2000 to 2004*.
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- 117 See See Munalula, *An outline of the study of jurisprudence*.
- 118 Ibid.
- 119 *The Post*, 2002.
- 120 Chikwanha, *Zambia – crime and criminal justice country situational report*.
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- 122 Zambia has a very young population, with children under the age of 18 years representing more than 50 per cent of the entire population.
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- 162 *Zambia Daily Mail*, 25 May 2007.
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Appendix 1

Master questionnaire

African Human Security Initiative (AHSI) 2

Country assessment on crime and criminal justice

INTRODUCTION

AHSI2 is a follow-up project to AHSI1. The latter provided for a core network of seven established African non-governmental organisations that benchmarked the performance of eight African governments in respect of broad human security issues. This was measured against the commitments taken at the level of the African Union heads of state meetings and thus served as a process that complemented the peer reviews that are undertaken in terms of the African Peer Review Mechanism (APRM) of the New Partnership for Africa's Development (NEPAD).

The purpose of the AHSI2 project is to use the opportunity created by the peer review concept to complement the formal NEPAD/APRM process by focusing on the criminal justice system in selected countries identified for APRM review. Through this process, AHSI2 will build the capacity of an expanded membership and local partners to undertake research on security issues. The eventual objective is that this should facilitate work orientated towards the Peace and Security Council of the AU.

By timing its outputs so as to inform and complement the APRM process in each country, AHSI2 will exploit the opportunity to broaden the application of

the APRM approach and principles to those areas currently outside the focus of the review.

Background information on the project

At the 2004 Annual Bank Conference on Development Economics (ABCDE conference) the World Bank emphasised that there is a need to focus on the security of developing countries. Security was defined as a public good that was conditional for development. The main concern was with state repression and ineffective security and justice systems. Development in Africa thus requires a secure environment – encapsulated by the so-called ‘security first’ or ‘security and development’ approach. Human security requires, first and foremost, an appropriate, functioning state system. This project aims to encourage greater focus on state responsibility and capacity to provide security. It will do so by focusing on the efficacy of the criminal justice system in each country. Specifically, the focus will be on the nature of crime and the state of the police and judiciary. In doing so the project will be informed by a fundamental concern for respect for human rights and the rule of law as the key requirements for democracy, security and development. In order to build confidence among both the public and the political leadership in countries where respect for human rights and the rule of law have largely been absent, the benefits of these values will be well demonstrated.

Aims

The specific aims of the project are:

- To complement the work of the Africa Peer Review Mechanism in areas not covered by it and to mimic the formal APRM process in its methodology and in the development of appropriate frameworks to support the implementation of national commitments and obligations.
- To provide governments with empirical evidence on the status of criminal justice and its impact on political processes in their countries. This involves working with them to develop a set of realistic and informed recommendations for each area to help bridge gaps between national commitment and implementation.

- To identify the structural and other inherent weaknesses in the criminal justice systems, and encourage policy dialogue and public awareness of the broader implications of crime on the consolidation of democracy.
- To support the development and build capacity amongst a core network of partners in an area where civil society organisations are traditionally the weakest in Africa, namely content work on crime and justice matters.

Questions

This document provides a guideline for each of the five countries that will be reviewed in this process in terms of AHSI2. Country specificities will be taken into account through a process of indigenisation by the local partners who will be involved in the study. The AHSI2 secretariat will render technical support through all the phases of the research.

The review aims to assist and monitor the implementation capacity in each of the areas listed below:

- Adherence to regional/international instruments
- Participation in regional institutions working on combating crime
- Crime
- Policing
- Prosecution
- The judiciary
- Access to justice
- Juvenile justice
- Customary justice

For each section, key questions are posed and these are followed by some indicators which serve as a guide in the assessment process.

Regional and international standards

A list of regional and international protocols, conventions and standards that were adopted for managing crime and enhancing the efficiency and effectiveness of the criminal justice system on the continent is given below. The aim is to assess the country's commitment to these guides and explore alternatives

that have had the same effect. Other guides that have not been mentioned but are applicable for the country should be included and all sources must be cited. Add all other necessary indicators.

Question 1: Has country ratified or acceded to all relevant African instruments aimed at curbing crime?

Question 2: How has it fared at implementing the various African instruments aimed at controlling crime?

Regional/international instruments

- Universal Declaration on Human Rights, 1948
- African Charter on Human and People's Rights, 1981
- UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985), 1985
- Conference on Security, Stability, Development and Cooperation, 1991
- The Kampala Declaration on Prison Conditions in Africa, 1996
- SADC Protocol on Combating Illicit Drugs, 1996
- Nairobi Declaration on the Problem of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, March 2000
- Protocol against the Smuggling of Migrants by Land, Sea and Air (GA 55/25 annex 11), 2000
- Protocol to Prevent, and Suppress and Punish Trafficking in Persons, especially Women and Children (GA 55/25 annex 11), 2000
- United Nations Convention against Transnational Organised Crime (GA resolution 55/255), 2000
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, 2001
- Declaration and Plan of Action on Control of Illicit Drug Trafficking and Abuse in Africa, 2002
- Protocol on the Control of Firearms, Ammunition and other Related Materials, 2002
- UN and AU anti-corruption codes

Cite dates of ratification and how these have been domesticated and membership dates to any of the bodies listed below. Document the extent of compliance. If not ratified, give evidence of other codes or policy instruments that have been implemented and to what extent they meet the objectives.

Regional institutions working on combating crime

- African Commission on Human and People's Rights
- Africa Institute for the Prevention of Crime and the Treatment of Offenders
- Conference of Central, Eastern, Southern Africa Heads of Correctional Services East African Police Chiefs Cooperation Organisation
- International Law Enforcement Academy Southern African Regional Police Chiefs Cooperation Organisation
- Regional Centre on Small Arms and Light Weapons in the Great Lakes and Horn of Africa Region
- Southern African Development Community, Drug Control Committee
- Southern African Forum Against Corruption 1999
- United Nations Interregional Crime and Justice Research Institute

Question 3: In complying with these instruments, how has the government dealt with capacity constraints?

Attempts must be made to disaggregate all data by key demographic variables such as gender, province and location.

CRIME

Crime in Africa is argued to be a developmental concern rather than a law enforcement issue. Weak institutional capacity for effective policing, coupled with a dearth of basic information on crime and criminal justice statistics such as prosecutorial, court and prison data, hamper efforts to make appropriate diagnostic solutions. Whilst such statistics do not necessarily suffice for a clear and concise indication of levels of crime, they provide a clear indication of the operations, and at times the efficiency and effectiveness of the criminal justice

system. In this section, attention will be on analysing the extent of crime in the country.

Incidence of crime

- Levels of crime/prevalence of crime/perceptions of crime
- Use police reports/existing survey data/victimisation surveys/anecdotal evidence from the media reports (corroborated)
- Provide evidence on organised crime
- What are the common crimes that females commit?
- Measures effected to combat various types of crime, such as white collar crime
- The current situation of corruption/perceptions on levels of corruption
- Current problems and solutions relating to corruption in the criminal justice system/problems and solutions at the investigation and prosecutorial level/problems and solutions at the trial level
- Role of the media in bringing corruption to light/general measures taken to prevent corruption/constitutional provisions for guarding against corruption
- Parliamentary reports on high level crime/prominent cases of corruption in the country and how this has been resolved
- Evidence of international/regional cooperation in corruption control
- Levels of drug trafficking
- How has drug trafficking been combated?
- Give evidence of human trafficking
- Illegal migrants and xenophobia/protection of minorities' rights and refugees
- Money laundering/indicate measures take to implement the recommendations on anti-money laundering

Prosecution

Many countries have directorates of public prosecution (DPP) that are responsible for prosecuting trials and appeals on behalf of the state, provide legal advice to law enforcement agencies on investigations and bureaus and departments on measures to reform the criminal law and in the institution of criminal proceedings.

Ideally, the Office of Public Prosecutions operates independently of government. In many cases, ultimate authority for authorising prosecutions lies with the Attorney General. Because this post is associated with a political role, it is desirable that this function should be carried out in a non-political (public) service. In most circumstances, the prosecutorial powers of the attorney general are delegated to the DPP. This section scrutinises the efficiency of this department.

Outline

- The general mandate of the office of the DPP
- Views on the autonomy of the DPP's office in deciding which cases should be prosecuted
- Linkages between the DPP's office and other law enforcement agencies, such as the Anti-Corruption Commission and the Police Service
- How effective are the linkages? If not effective, what are the constraints? What can be done to enhance the linkages?
- What should be done to enhance the autonomy of the DPP's office?

Provide evidence

- What cases are normally brought before the DPP's office for attention?
- What constraints, if any, does the DPP's office face in making decisions on some of the cases brought before it? How are such constraints normally dealt with?
- Is the DPP's consent necessary for the prosecution of all cases involving corruption?
- Is there any cooperation between the DPP's office and similar institutions within the region? If so, what are the benefits of such cooperation?
- Which prominent cases have been dealt with by the DPP's office in the past three to five years? How were such cases resolved?

Policing and law enforcement

The police enforce laws passed down by government as well as protect citizens from potential and actual threats. In order to provide a safe living and working environment successfully, the police force has to rely on cooperation of the

public. Both issues become problematic in the absence of an environment that upholds the rule of law and where resources are scarce. The aim here is assess effectiveness of the police force, identify resource constraints and suggest possible measures for reform.

Question 1: Are policing institutions effectively structured and are resources adequate to ensure professionalism and integrity in public services?

Question 2: Is the police force subject to the rule of law?

- Describe resources the force has (such as the number of stations and their location), as well as any special facilities
- Outline
 - Code of conduct for the police
 - Independent bodies for monitoring police abuse
 - Ombudsman's reports on police assaults/unfairness
 - Regularity and quality of reports to treaty bodies
 - Adequacy of budgetary provisions
 - Programmes for training or development of the police force and whether and how this is used for promotions
- Give information on mechanisms that make the police accountable to other bodies in the criminal justice system, such as the judiciary

Question 3: What mechanisms have been put in place to encourage and promote effective citizen participation in policing?

- Provide evidence of legal, policy and institutional steps to ensure broad participation by all stakeholders, including community-based organisations, the private sector, media, women's groups, the disabled and minorities
- Describe the system in place, funds allocated for the processes, how sustainable are these efforts? What can be done to enhance effectiveness and ensure sustenance?

- Assess the effectiveness of these measures
- Determine the extent of private policing arrangements

Prisons

The codes that specify how prisoners should be handled pose quite a challenge for resource starved nations that also grapple with adhering to universal human rights as specified by the United Nations conventions. While the nature of prisons and prison systems do vary, there are some standards that ought to be upheld in the treatment of prisoners. The aim is to identify capacity problems in the management of prisons and propose solutions for reforms where necessary.

Question 1: Does the actual situation in prison conditions and treatment of prisoners reflect a respect for human rights and dignity?

Question 2: Are the international principles for the protection of all persons under any form of detention or imprisonment complied with?

Question 3: What are the needs of female prisoners?

- Number of inmates v number of prisons, allocation of prisoners by gender/age/offence committed, general conditions, meals, bedding, medical attention
- Incidence of illness in prisons, especially TB and HIV/AIDS
- Handling of pre-trial detainees and those who have been convicted
- Access to legal counsel
- Staff conditions, resources (pay attention to gender differences throughout)

Judiciary

The judiciary is responsible for administering justice and the term is used to collectively refer to the judges, magistrates and other adjudicators who are at the core of the system. Under the doctrine of separation of powers, it is the branch that interprets the law. To ensure justice and fairness, the judiciary has to be independent, yet many studies demonstrate that executive interference tends to

skew justice delivery in many African countries. This section aims to identify the loopholes in the administrative setup of the judiciary and how this affects the legitimacy of some of its decisions.

Question 1: Is the judiciary independent?

- Provide evidence on the extent of independence of the judiciary, such as appointment procedures, security of tenure, access to resources, dispensing of justice, enforcement of judicial decisions by the state
- Describe the process of appointing members of the judiciary as well as other top security officials
- Assess the safety of judges who are dealing with sensitive cases, for example corruption

The criminal justice process

This process follows the steps set out below and needs to be assessed at each stage:

investigation → search warrant → interrogation → arrest → indictment →
arraignment → bail → plea negotiations → trial → the verdict → appeal

- Are procedures followed timeously in dealing with suspects after a report has been filed? Find evidence of the average time that different offenders take to move through the whole process
- Where does the system stall, or does it proceed quickly? Give evidence and statistical data
- Are criminal judgments based on written law?
- Assess the effectiveness of the general criminal justice system, with emphasis on the role of the judiciary. Look at the overall system in terms of delivering results that are judged to be generally free and fair.

Access to justice

Access to justice refers to how different people – males/females, rich/poor, offenders/victims – are able to penetrate the structure entrusted with justice delivery and the satisfaction they get from it. Literature and field studies reveal that African criminal justice systems fail to cope with demands because they operate within extremely limited infrastructure and funding. How then have the countries fared in the equitable delivery of equal justice for all? The aim is to assess the efficiency and effectiveness of the system as well as identify areas that require strengthening.

Question 1: What bottlenecks exist in the criminal justice system?

Does the justice delivery system meet the needs of female victims/offenders? Use rape and domestic violence victims' experiences and records as evidence.

Question 2: What progress has been made towards gender equality in all areas of the criminal justice system?

Gather evidence of gender ratios amongst staff in the police, prison and judiciary services. Also provide information on any gender disparities in salary structures.

Question 3: What policies, legislation and strategies are in place to ensure access to justice for marginalised groups?

- Outline evidence of legal policy processes and institutional steps to ensure access to justice for marginalised groups, such as the poor, juveniles and women

- What are the social and legal problems that women face when they seek justice?
- Give evidence of resources allocated for this and show results in terms of percentages accessing such facilities by gender, age, location (rural/urban)
- Pay attention specifically to the availability of resources for the rural poor
- Specify studies carried out on the status of women versus the criminal justice system
- Gather evidence on vigilante justice

Juvenile justice

Juvenile law is mainly governed by state law and most countries have enacted a juvenile code. The main goal of the juvenile justice system is rehabilitation rather than punishment, but children, both offenders and victims, often struggle with the justice system in most African countries. The UNICEF Child Protection Unit has thus attempted to control and stabilise the child justice process in a number of countries through the provision of technical, capacity-building and financial support. This has led to the establishment of child friendly courts, arrest receptions and referral services for minors in some countries. The aim is to identify gaps in adhering to international standards in dispensing child justice.

Question 1: How has the country fared on the provision of justice to minors?

Question 2: How are the efforts to address the problem of children who have to deal with the entire justice process organised (centralised/decentralised)?

- Document the development of human rights with regard to juveniles and the enforcement of regional/international instruments
- Explain the system/reforms implemented in the country, describe the statutes that provide methods for dealing with juvenile delinquency, the number of related institutions, methods of providing for the safety and welfare of children, staffing of relevant institutions. Mention cases as evidence where necessary

- Identify the rules with which state laws must comply with regard to juvenile court procedures and punishments
- Mention problems concerning juvenile justice in the country, for example relating to pre-trial detention
- Gather evidence of alternative sentencing options

Customary justice

This section focuses on the role that non-state dispute resolution systems, typically based on customary, traditional or tribal systems of justice, may play in fostering the rule of law in post-conflict societies. The intention is to assess the potential allocation of jurisdiction between formal and customary systems of justice, approaches to adapting customary practices that may contravene international human rights standards and the limits and problems in the use of customary justice mechanisms. Explore the coexistence of formal and informal systems in the particular country. The aim is to provide guidance on the potential role of customary justice systems.

Question: What is the role of customary justice in the country and what is the position vis-à-vis the Constitution?

- Outline Africa/country-specific informal justice systems as well as evidence of restorative justice
- Indicate the nature of crime cases handled by the structures dispensing these services and identify the target group that mostly seeks or is forced to seek justice through customary structures

Appendix 2

General methodological approach

The study proceeded in a number of stages. The AHSI2 secretariat was involved at all the stages and rendered technical support throughout. The stages were as follows:

- *Stage 1:* The engagement of country partners by AHSI 2 and preparation of the questionnaire for the country's local context. This was done with the help of the country background report. An issue paper derived from this document served as a guideline for the actual study. Selected partners wrote brief action plans on how they intend to proceed with the study. They also compiled a list of stakeholders and other likely respondents for interviews they conducted. Partners indicated the institutions, such as prisons they intended to visit and later documented
- *Stage 2:* A country workshop was held during which studies pertaining to all sections were discussed. AHSI 2 took a holistic approach to this study, hence all sections outlined in the master questionnaire were viewed and treated as being interconnected
- *Stage 3:* Fieldwork/data collection by the partners and analysis of the findings were followed by a discussion of the preliminary report

- *Stage 4:* Finalisation of the country report, drafting of policy briefing documents and preparation for publication
- *Stage 5:* Confidential policy briefings with relevant stakeholders followed by general dissemination of the findings

DATA COLLECTION

Document review

A document review was performed for every country, as well as an analysis of the institutional (constitutional) framework governing the administration of criminal justice. A review of non-governmental documentation on the crime situation and the functioning of the police and courts, for example information from the media, donor-commissioned studies, reports of international human rights monitors and reports from local academic and research institutions were undertaken. Official documentation from the relevant country, including official crime statistics, victimisation surveys, case studies of particular issues such as organised crime, interpersonal violence, gun violence, illicit drug-related crimes as well as available documentation on the capacity and effectiveness of the police and court systems (such as governmental annual reports, statistics, parliamentary reports) were studied. Official documentation from other sources, such as the Survey of Crime Trends and the Operations of Criminal Justice Systems of the United Nations Office for Drugs and Crime and Interpol reports were also studied.

Structured interviews/focus group discussions

In-depth interviews or focus group discussions were conducted with individual key officials in the relevant government departments and groups of interviewees from select target/stakeholders. The actual number of interviews per organisation were determined during the preparation of the detailed country research plan and was based on more information about each organisation that became available. The interviews were largely structured.

Interviews or focus group discussions with selected stakeholders involved indirectly in the management of crime and security problems, and service delivery to those affected by crime, such as private security companies, informal

community based anti-crime organisations, traditional leaders, hospitals, clinics and ambulance services, relief agencies, counselling or psychological services providers, legal aid agencies, defence lawyers, security advisors to the corporate sector or multinationals operating in the countries concerned. Direct questions were asked about stakeholders' views of government policy with regard to criminal justice.

Interviews or focus group discussions with key representatives of organised civil society such as women's groups, religious or faith-based groups, trade unions, community or residents' associations, the education sector (particularly schools) and youth organisations. The aim of these discussions was to identify the key safety and security needs and challenges facing the communities represented by the stakeholders, general views about crime and safety, priority needs with respect to safety and security, and views about the capacity and performance of the criminal justice sector. Direct questions were also be asked about stakeholders' views of government policy with regard to criminal justice.

Questionnaires

A set of standardised questionnaires were administered across the countries involved in the project.

Victimisation survey

The suggestion was that if necessary, from the input gathered in the course of the above approaches, crime victimisation surveys might need to be conducted in specific locations in an attempt to provide more objective and quantitative data on the nature and extent of the crime situation. The suggestion was that this would only be necessary if the qualitative approach revealed strong disagreements among stakeholders (and government) about safety and security issues, or if the research revealed important issues that the local stakeholders believed require in-depth exploration. However, in the case of the research and data collection on Zambia no major disagreements were found and accordingly more surveys were not carried out.

A detailed analysis of public opinion data was conducted where data was available.

Appendix 3

Balance sheet of human development in Zambia

PROGRESS	CHALLENGES
Income and poverty	
■ Extreme poverty in rural areas has declined from 71 per cent in 1998 to 53 per cent in 2004 ■ Per capital GDP has grown from K234 933 in 1998 to K276 416 in 2004 ■ Poverty reduction and broad-based economic growth has been prioritised in the fifth National Development Plan	■ To reduce the overall extreme poverty which is at 68 per cent ■ To reduce extreme poverty in urban areas, which has dropped only marginally from 36 per cent in 1998 to 34 per cent in 2004 ■ To improve the marginal reduction rate in the proportion of stunted children: the drop from 53 per cent in 1998 to 50 per cent in 2004 means that malnutrition rates are still too high ■ To growing GDP consistently, at over 7 per cent for 25 years, to have a significant impact on poverty

PROGRESS	CHALLENGES
Education	
■ Net enrolment in primary education increased from 66 per cent in 2000 to 78 per cent in 2004 ■ The proportion of pupils who reach Grade 7 increased from 64 per cent in 1990 to 82 per cent in 2004	■ To reduce youth illiteracy rate (ages 15–24) from 74,9 per cent in 1990 to 70,1 per cent in 2000
Gender equality	
■ The percentage of women in formal employment rose from 25,2 per cent in 2002 to 27,3 per cent in 2004 ■ The proportion of seats held by women in the national Parliament increased from 6 per cent in 1990 to 12 per cent in 2004	■ To improve the ratio of girls to boys in primary school. Girls' school attendance rate dropped from 0,98 in 1990 to 0,9 in 2005 ■ To improve the ratio of girls to boys in secondary school (figures dropped from 0,92 in 1990 to 0,83 in 2005)
Child mortality	
■ Prevention of mother to child transmission services have been integrated into routine health services ■ The under-five mortality ratio decreased from 197 per 1 000 live births in 1996 to 168 in 2002 ■ The infant mortality ratio decreased from 109 per 1 000 live births in 1996 to 95 in 2002 ■ The child mortality ratio dropped from 98 per 1 000 live births in 1996 to 81 in 2002	■ To halt the trend of increases in the proportion of wasted children, which rose from 5 per cent in 1998 to 6 per cent in 2002 To reverse the trend of decreased immunisations, in which the proportion of children who were immunised against measles dropped from 91 per cent in 1998 to 86,2 per cent in 2004 ■ To reverse the trend of decreased immunisations, in which the proportion of children who were immunised against measles dropped from 91 per cent in 1998 to 86,2 per cent in 2004
Maternal mortality	
■ A reproductive health policy has been drafted and is under consideration ■ Pregnant women, as well as children and the elderly (aged 64 years and more), have been exempted from paying for medical services ■ The government is implementing strategies for the prevention of malaria in pregnant women	■ To further reduce the maternal mortality rate, which has increased from 649 in 1996 to 729 in 2002 ■ To increase the percentage of births attended by skilled personnel, which has dropped from 51 per cent in 1992 to 45 per cent in 2002

PROGRESS	CHALLENGES
HIV/AIDS, malaria and other diseases	
■ Progress has been made in reversing the HIV prevalence ■ The cure rate for TB has been improving for all provinces except for Eastern and Southern provinces ■ The malaria incidence rate per 1 000 fell from 400 in 2000 to 200 in 2004	■ Unprotected sex continues to be a problem ■ Voluntary counselling and testing uptake is low. Only 11 per cent of men and 15 per cent of women went for VCT in 2005 ■ The number of children orphaned by AIDS reached 1 197 867 in 2005, two thirds of the total number of orphans ■ The incidence rates of TB and malaria at 512 per 100 000 persons in 2000 and at 200 per 1 000 persons respectively in 2004 are too high
Water and sanitation	
■ The percentage of people without toilet facilities decreased from 16 per cent in 1998 to 14 per cent in 2004 ■ Progress has been made in reducing unsafe water sources	■ The percentage of people without access to safe water in the dry season remained almost stagnant at 43 per cent in 1998 and 42,8 per cent in 2004
Equity	
■ There has been a reduction in income inequality. The Gini coefficient declined from 0,66 in 1998 to 0,57 in 2004 ■ Whereas the lower 20 per cent of households accounted for 67,8 per cent of the total income in 1996, this dropped to 44,9 per cent in 2004	■ Despite improvements, income inequality remains extremely high ■ Economic growth in recent years has not been sufficiently broad based. This is mostly due to underperformance of the agricultural sector, which is the sector in which the majority of Zambians earn a living
Employment and sustainable livelihoods	
■ Overall unemployment rates dropped from 12 per cent in 1998 to 9 per cent in 2004 ■ Urban unemployment rates decreased from 27 per cent in 1998 to 21 per cent in 2004 ■ The male unemployment rate fell from 25 per cent in 1998 to 18 per cent in 2004	■ To improve the rate of female urban unemployment, which dropped from 29 per cent in 1998 to 26 per cent only in 2004

PROGRESS	CHALLENGES
Environmental sustainability	
■ The percentage of households who had electricity rose slightly from 15 per cent in 1998 to 16,2 per cent in 2004 ■ The Natural Resources Consultative Forum was established to facilitate dialogue on contentious environmental issues ■ The Environmental Council of Zambia established additional offices in the Southern and Copperbelt provinces	■ A large percentage of Zambia's households (83,4 per cent in 2004) still relies on firewood and charcoal as cooking energy. This is a threat to the forests ■ Plant species that may hold the cures for a range of diseases are being depleted at a fast rate
Politics, governance and human rights	
■ The 2002–2006 National Parliament was more balanced, with a sizeable number of opposition members ■ The Task Force on Corruption was created in 2002 ■ A draft constitution, with more progressive provisions, was presented to the government	■ The number of reported incidents of gender-based violence is still very high ■ The process of constitutional and electoral reforms is still to be concluded ■ Little progress has been made on decentralisation ■ The justice delivery system continues to be inefficient and slow to guarantee the rights of the majority of Zambians

Appendix 4

Country fact sheet

Location	Southern Africa, between latitude 8 and 18 degrees east and longitude 22 and 34 degrees south
Border countries	Angola, Botswana, Democratic Republic of Congo, Malawi, Mozambique, Namibia, Tanzania and Zimbabwe
Surface area	752 612 km ²
Population	11,1 million (2004 estimate)
Population density	13,7 per km ²
Capital	Lusaka, with a population of 1,5 million (estimated)
Independence	24 October 1964 from United Kingdom
Constitution	According to constitutional law, the legislative power of Zambia is vested in Parliament, which consists of the President and the National Assembly
Legal system	Based on common law. There are several specific references to English law, of which the most important are the British Acts Extension Act and English law

Political governance	Elections – The President is elected by popular vote for a five-year term, and is eligible for a second term. The last election was held November 2006, and the next will be held 2011
Head of state	Rupiah Banda
Electoral system	List system with popular vote
Political system	Parliamentary democracy
Population growth rate	2,4 per cent per annum
GDP per capita	K1 528 506 (about US\$380)
GDP growth rate	5,1 per cent (2005 estimate)
Literacy rate	79,9 per cent
Natural resources	Wildlife, forestry, freshwater lakes, copper, cobalt, zinc, lead, coal, emeralds, hydropower

Appendix 5

Zambia social indicators

Human Development Index (HDI) with HIV and AIDS	0,462 (2004)
HDI without HIV and AIDS	0,491 (2004)
Human development rank (2006)	165 out of 177 countries whose HDI was measured
Life expectancy (with AIDS)	52,4 years
Life expectancy (without AIDS)	57,5 years
Adult literacy rate (ages 15 and above)	66,0 per cent
Gross school attendance rate (combined)	84,7 per cent
Percentage of population without access to safe water	42,8 per cent
Percentage of population without access to health services	9,0 per cent
Human Poverty Index	27,2
Per capita income	US\$347,43
Estimated number of orphans	1 147 614 (2004)

Estimated HIV prevalence (ages 15–49)	14,4% (2004 estimate)
Infant mortality rate (per 1 000 live births)	95 (in 2002)
Estimated (2004) total number of children orphaned by AIDS	750 504
Under-five infant mortality rate (per 1 000 live births)	168 (2002)
Maternal mortality rate (per 100 000 live births)	729 (2002)

Sources United Nations Development Programme (UNDP), *Zambia Human Development Report*, 2007; UNDP, *Beyond scarcity: Power, poverty and the global water crisis*, New York.