

ACCESS TO JUSTICE AND THE RULE OF LAW

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**AN ISSUE PAPER PRESENTED FOR THE COMMISSION ON
LEGAL EMPOWERMENT OF THE POOR**

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS	3
1.0. INTRODUCTION	4
1.1. POLITICAL AND SOCIAL CONTEXT IN ZAMBIA	4
1.1.1. <i>Human Rights and Rule of Law</i>	4
1.1.2. <i>Democratic status of Zambia</i>	5
1.1.3. <i>Gender and Governance</i>	5
1.1.4. <i>Gender-based violence</i>	6
1.1.5. <i>Revision of statutory laws</i>	7
1.2. CONSTITUTIONAL AND LEGAL REFORMS IN ZAMBIA.....	7
1.5.1. <i>Specific proposals for the new constitution</i>	8
1.6. POVERTY AND EXCLUSION IN ZAMBIA	9
2.0. METHODOLOGICAL APPROACH	10
3.0. CONTEXT SETTING	11
3.1. CONCEPT OF ACCESS TO JUSTICE.....	11
3.2. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS	11
3.2.1. <i>Overview of women's legal rights</i>	12
3.3.1. <i>Judicature</i>	13
3.3.2. <i>Ministry of Justice</i>	13
3.3.3. <i>Director of Public Prosecutions</i>	14
3.3.4. <i>The Legal Aid Board</i>	15
3.4. ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.....	17
3.5. PRO BONO SERVICES.....	17
3.5.1. <i>National Legal Aid Clinic for Women</i>	18
3.5.2. <i>Legal Resources Foundation</i>	18
3.5.3. <i>Challenges of Pro-bono services</i>	18
4.0. HOW ACCESSIBLE IS JUSTICE IN ZAMBIA?	19
4.1. LOW AWARENESS LEVELS.....	20
4.2. LEGAL COSTS.....	21
4.5. LIMITED INFRASTRUCTURE.....	22
4.6. DELAYS IN COURT PROCEEDINGS.....	22
4.7. FINANCING TO INCREASE ACCESS TO JUSTICE.....	23
5.0. RECOMMENDATIONS	24
5.1. SUPPORT OF LEGAL AID INSTITUTIONS	24
5.2. INFRASTRUCTURE DEVELOPMENT	24
5.3. COURT PROCEDURES.....	24
5.4. PARA LEGAL STAFF	25
5.5. MENTORING OF PARA LEGAL STAFF	25
5.6. CIVIL SOCIETY	25
5.7. NATIONAL PROSECUTIONS AUTHORITY	25
5.8. CASE MANAGEMENT	25
BIBLIOGRAPHY	26
ANNEX 3: LIST OF INSTITUTIONS/ORGANISATION INTERVIEWED	28
ANNEX 4: INTERVIEW GUIDE	29
ANNEX 5: QUESTIONNAIRE	31

LIST OF ABBREVIATIONS

ADB	-	Africa Development Bank
ADR	-	Alternative Dispute Resolution
AG	-	Attorney General
FNDP	-	Fifth National Development Plan
GDP	-	Gross Domestic Product
GDU	-	Governance Development Unit
DPP	-	Director of Public Prosecutions
HIPC	-	Heavily Indebted Poor Countries
HURID	-	The Institute of Human Rights, Intellectual Property and Development Trust.
HIV		Human Immuno-deficiency Virus/ AIDS – Acquired Immune Deficiency Syndrome
IMF	-	International Monetary Fund
LAZ	-	Law Association of Zambia
LCMS	-	Living Conditions Monitory Survey
LRF	-	Legal Resources Foundation
MDRI	-	Multilateral Debt Relief Initiative
NLACW	-	National Legal Aid Clinic for Women
NGOCC	-	Non-Governmental Organization Co-ordinating Committee
NGO	-	Non – Governmental Organization
PRSP	-	Poverty Reduction Strategy Paper
SAP	-	Structural Adjustment Programme
SHEMP	-	Small Holder Enterprise and Marketing Programme
SIDA	-	Swedish International Agency for Development
TNDP	-	Transitional National Development Plan
TIZ	-	Transparency International Zambia
USAID-		United States Agency for International Development
UNCITRAL	-	United Nations Commission on International Trade Law
WLSA -		Women in Law in Southern Africa
WRC	-	Women’s Rights Committee
YWCA-		Young Women Christian Association
ZAA	-	Zambia Association of Arbitrators
ZACCI-		Zambia Chamber of Commerce and Industry
ZCDR	-	Zambia Centre for Dispute Resolution Limited
ZLDC	-	Zambia Law Development Commission
ZIALE	-	Zambia Institute of Advanced Legal Education

1.0. INTRODUCTION

The Commission on Legal Empowerment of the poor seeks to explore the possibility of reducing poverty through the opportunities given to citizens especially the poor to obtain necessary protections as provided for by the legal system. The Commission is planning a series of national consultations to primarily create awareness on the nature and dimensions of legal exclusion of the poor in the four thematic areas of Access to Justice and Rule of Law, property rights, labour rights and legal mechanisms to empower informal businesses. This is a working paper on Access to Justice and rule of law prepared as part of the process leading to the national consultation. The paper examines the current legal system in Zambia and identify the extent to which these systems exclude the poor. Recommendations are made on how these gaps can be addressed.

1.1. POLITICAL AND SOCIAL CONTEXT IN ZAMBIA

The emergence of the multiparty democracy in 1991, came with some much promise for protection of basic human rights: the right to life, private property, and freedom under the law; freedom of assembly, association and of the press; and the end to all forms of discrimination against women. In addition, there was consensus among the majority of Zambians on the need to uphold democracy based on a multiparty system, with effective checks and balances; while also ensuring the separation of powers by upholding the principle of legislative sovereignty, the independence of the judiciary and parliamentary form of government at the national level as well as democratize the local government institutions as the only valid way of giving back power to the people.

The state of democracy in Zambia, however, is still in its formative stages with the overall quality of governance in need of further improvements. Some of the inadequacies include: high levels of corruption in both the public and private sectors; lack of meaningful constitutional development which continues to be manipulated to suit political exigencies of the ruling party. Additionally, there are still some concerns about press freedom as well as the integrity of the electoral process. The state of local government can be aptly described as inglorious with a depleted financial base and a general decline in the quality of services provided at local level.

1.1.1. Human Rights and Rule of Law

Respect for human rights is one of the essential elements of good governance. Human rights are defined as rights that belong to everyone on account of being a human being. Since 1945 the United Nations (UN) has adopted numerous human rights instruments which lay down universal human rights standards. The major human rights instruments include: *The Universal Declaration of Human Rights 1948*; *International Covenant on Civil and Political Rights 1966 and its two Optional Protocols of 1966 and 1989*; *International Covenant on Economic, Social and Cultural Rights 1966*; *International Convention on the Elimination of All forms of Racial Discrimination 1965*; *Convention on the Elimination of All Forms of Discrimination against Women 1979 and its Optional Protocol of 1999*; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*; *Convention on the Rights of the Child 1989*; *Convention for the Protection of Migrant Workers*; *Convention on the Status of Refugees 1951 and its Protocol of 1967*; and the *Genocide Convention*, etc. Zambia has ratified, and is therefore, a state party to most of these treaties.

Apart from these treaties adopted under the auspices of the UN there are also regional human rights instruments. Africa has also its own regional human rights system which comprises *the African Charter on Human and Peoples Rights 1981, Additional Protocol to the African Charter on Human and Peoples Rights on the establishment of an African Court of Human Rights 1999, Protocol to the African Charter on Human and Peoples Rights on the Protection of the Rights of Women 2003, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1969, and African Charter on the Rights and Welfare of the Child 1990*. Zambia is party to all these African conventions.

Although Zambia has ratified a large number of international and regional human rights instruments there has been little domestication of these instruments. The dualist system of law Zambia inherited from Britain ensures that treaties ratified by Zambia do not automatically become part of Zambian law unless they are specifically incorporated through an Act of Parliament. The Government's failure to pass the required legislation to facilitate incorporation means that most of the internationally guaranteed rights cannot be enforced in Zambian courts.

1.1.2. Democratic status of Zambia

After independence the country was run on a multi-party system until 1972 when a one-party state was declared. Within this system elections were held every 5 years with candidates competing for positions of councillors and members of parliament but with only one presidential candidate until 1991, when multi-partism was reintroduced. Since then, the country has held three Presidential and General elections which have gone a long way in consolidating the democratic political dispensation. Despite this being the case there have been questions about the electoral system and constitutionalism.

1.1.3 Gender and Governance

Equal participation of men and women in the governance of the country is essential in providing a balanced and accurate composition in the strengthening of democracy in society. But for a long time now, gender imbalance in both the economic and political governance of the country has persisted, with the men dominating high decision –making positions in public, private and political institutions and relegating women to lower echelons. Even after four decades of independence, the country has not yet fully integrated women in decision making by according them decision making positions at all levels. Gender inequalities are structurally embedded and persist throughout the private and public realms.

As at end of December 2005, the representation of women at policy level was only 20% and 19% in Cabinet and Parliament respectively, while 18.5%, 23%, and 20% represent women's participation at civil service level and assuming the positions of Permanent Secretaries, Directors and Deputies in that order. 18.6% of the members of the Constitution Review Commission were women while the Electoral Reform Technical Committee consisted of 19% women. Exceptionally, the Anti-Corruption Commission is the only public institution that is constituted by 60% of women. At local government level, women are only represented by 7.3%. Thus, with the exception of the ACC, the statistics not only provide a clear indication that women still lag behind in assuming critical decision-making positions, but also Zambia's complete failure to attain the 30% SADC target of women representation in decision making structures by the year 2005, of which other sub –regional countries like Tanzania, Mozambique, South Africa and even Rwanda, among others, have exceeded, with Zambia being ranked 7th in the region in this regard. Consequently, women have not been

able to influence policies and decisions that would otherwise empower women and hence improve their status.

1.1.4. Gender-based violence

Current trends of gender violence have seen an upward increase and these acts of violence range from physical, sexual and psychological abuse of women and children. These have mainly taken the form of rape, child defilement or women being abused, mostly by their husbands. The Young Women Christian Association (YWCA) Child Crisis Centre has, since its inception in 1998, received and recorded a number of child abuse cases and the trend shows an annual increase. The following are the cases reported: 78 cases in 1999; 88 cases in 2000; 110 cases in 2001; and 715 cases in 2002, (NGOCC, 2004). Records at the Victim Support Unit (VSU) of the Zambia Police Service indicate following: 5, 655 cases (2001), 6, 837 cases (2002), 7, 081 cases (2003) and 7, 690 cases in 2004. Equally, the NLACW had to deal with 1086 cases of matrimonial disputes in 2005 alone. Realistically, if all cases were reported, they would undoubtedly surpass the current statistics. This is so because studies conducted on the subject in Zambia and elsewhere; indicate that gender violence, including sexual violations, is shrouded in a culture of silence, hence most of the cases are not reported.

The Human Rights Watch (2002) in **“Suffering in Silence”** report that an increasing number of abuses against girls in Zambia come from members of their own families where those knowledgeable within the families hide the happenings and the girls (victims) are widely silenced. Underlying factors include fear of stigmatization, socio-economic insecurity of the victim or the parent/guardian negligence, and lack of parental care and ignorance. It is also worthy of note that in the past, gender -based violence in Zambia was more pronounced among adult women but in the last decade or two, a new trend has emerged in which children, particularly the girl-child, have become victims of the scourge.

Many social cultural practices such as early marriages, incest, tattooing, sexual cleansing, widow inheritance, dry sex, condone male infidelity, polygamy and women’s inability to negotiate for safer sex, either in or outside marriage, expose women to higher risk of HIV infection. The impact of violence and HIV/AIDS related violence goes beyond the risk of transmission. According to HRW (2002:10), in Sub-Saharan Africa, Zambia inclusive, HIV prevalence among girls under the age of 18 is 5 times higher than among boys of the same age. This worrying disparity means that girls have a lower average age of death from AIDS, as well as more overall deaths than boys. Sexual violence and other sexual abuse contribute directly to this disparity in infection and morality. Surprisingly, up to date, Zambia does not have a well-tailored national strategy that specifically focuses on punishing the willful transmission of HIV/AIDS to girls.

Currently, the country’s legislative framework is structured in a rather ‘fragmented manner’ that arguably, serves to perpetrate than remedy the problem of gender violence. Civil society working with Government have drafted a Proposed Sexual Offences and Gender Violence Bill (2006) which however, has yet to be presented to Parliament. The Bill proposes the creation of a specialized Sexual Offences and Gender Violence court with trial and evidential procedures less intrusive into the life of the victim of sexual abuse.

1.1.5. Revision of statutory laws

The Zambian Government recently revised the Penal Code to criminalize acts such as rape, abduction, indecent assault, defilement of girls under 16 years of age, sexual trafficking, brothel keeping and others, with the minimum sentence for defilement being 25 years. It has also removed discriminatory clauses against women or the use of gender-neutral language, and the laws regulating employment, property and land rights among others. However, implementation of such progressive laws still lag behind largely because the judicial officers and law enforcers are not gender sensitive and are still influenced by the cultural values that derogate women. Further, there has not been matching review of judicial processes including upgrading the jurisdiction of various levels of courts to allow them to pass appropriate sentences to offenders. The absence of such provisions renders most changes a mockery.

1.2. CONSTITUTIONAL AND LEGAL REFORMS IN ZAMBIA

Since independence Zambia has experienced at least three major phases in constitutional developments. These phases were, primarily, influenced by changes in the political environment, developments within the regional and global context, among others. Initially, the 1964 Constitution enshrined the idea of liberal democracy, but this was, however, weakened by many factors. The result of this was the 1973 Constitution, which introduced the one-party state under the United National Independence Party (UNIP). Seven years down the line, the demise of Communism in the Eastern Bloc countries and the re-emergence of new democracies in 1980, culminated in sweeping ideological realignments across the world. This historical shift in the global balance of power led to the crumble of the one – party state in Zambia, and facilitated for the review of the new Constitution in 1991.

The 1991 Constitution was seen more as a transitional instrument to answer the immediate pressures of the time, particularly pertaining to economic liberalization. Even the 1991 tripartite elections, won by the Movement for Multi-party Democracy (MMD), were held under the same Constitution. However, the MMD government initiated another Constitutional review in the quest for a lasting Constitution. Thus, they constituted a Constitution Review Commission headed by prominent lawyer Mr. John Mwanakatwe. The Mwanakatwe Constitution Review Commission made a number of far-reaching recommendations, notable among them being the strengthening of the Bill of Rights and the inclusion of the range of new rights. It was also proposed that there should be an increase in the protection of the rights of women and prohibition of laws, customary practices and stereotypes which worked against the dignity of women. The Commission equally recommended comprehensive provisions on children's rights. Despite the credible recommendations from the Commission, the government of President Frederick Chiluba rejected almost 80 percent of the recommendations made which reflected the aspirations of the majority of the people who submitted to the commission.

Historically, successive governments have initiated the Constitution making in Zambia under the Inquiries Act, whose provisions give the Republican President the discretion to, among others, develop Terms of Reference (ToRs), appoint the review commission, and most importantly reject or accept some of the recommendations. This was a source of contention, particularly following the Constitutional review undertaken by the Mwanakatwe Constitution. By and large, the 1996 amendment to the Constitution was considered to lack popular legitimacy as it did not take into account most of the submissions made by the

people. Furthermore, it introduced contentious clauses and the phenomenon of a minority president. Even the commission's recommendation for the adoption of the 1996 Constitution through the Constituent Assembly was rejected by the government, citing legal and technical constraints.

It was against this background as well as the general consensus on the need for a new Constitution after the 2001 tripartite elections, that the Republican President appointed the Willa Mung'omba Constitution Review Commission (CRC) in 2003 to gather public views and recommend the amendments to the 1996 Constitution. The Commission completed its work and its mandate expired in December 2005 when the final draft constitution and report were rendered to the Republican President and other stakeholders including civil society.

1.5.1. Specific proposals for the new constitution

The Willa Mung'omba draft constitution and report is based on specific thematic chapters which highlight a number of pertinent issues that are intended to move the country forward. Among these, is the recommendation to have the Economic, Social and Cultural Rights enshrined in the Bill of Rights and thus make them justiciable. It is important to note that the main purpose of the Directives is to guide the Executive, the Legislature and the Judiciary, as the case may be, in the development and implementation of national policies, making and enactment of laws and application of the Constitution and any other law.

Specifically, it has been recommended that the Constitution should provide for a number of fundamental rights which include the rights to; employment, health care services and education, among others. The draft constitution further recommends a legal provision to compel the State to take reasonable legislative and other measures, within its available resources to achieve the progressive realization of each of the rights in the Bill of Rights.

In terms of women and children's rights, the draft constitution is very categorical and proposes for the 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. In particular, the rights of able and disabled women are specifically provided for and the Article which guarantees non – discrimination should not be limited by exceptions or derogation clauses, while also ensuring that the principle of affirmative action is enshrined in the Bill of Rights. In addition, provisions of international and regional instruments on gender equality and women's rights to which Zambia is a state party or signatory, including Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), Southern African Development Community (SADC) Declaration on gender and development and Beijing declaration and plan of Action, should be incorporated into the Constitution. Equally, the following are the children's rights to be incorporated in the Bill of Rights:

- i. The right to life, including the right of an unborn child subject to exceptions permitted by law;
- ii. The right to parental care, family care or appropriate or alternative care when removed from the family environment;
- iii. The right to social security, including social insurance;
- iv. The right to basic nutrition and shelter;
- v. The right to protection from all forms of exploitation, maltreatment, neglect, abuse or degradation prejudicial to any aspect of the child's development and welfare;

- vi. The right to basic education, which shall be the responsibility of the State and parents of the child;
- vii. The right to protection from all forms of sexual exploitation and sexual abuse; and;
- viii. The right to special protection for orphans and vulnerable children.

1.6 .POVERTY AND EXCLUSION IN ZAMBIA

Zambia has been independent for 42 years. During these decades, the people have experienced many changes in their conditions of living although for the majority, this change has manifested itself in the decline of living standards. Even the economic expansion recorded since 1992, has failed to effectively reduce the endemic poverty levels. Particularly the modest recovery which has been obtaining is far much below the 5-7% necessary to reduce poverty significantly. This has been the case because the economic growth has drastically failed to create employment opportunities for the majority of the Zambians. Consequently, the majority of people in Zambia live in abject poverty, According to the Living Conditions Monitoring Survey IV of 2004 as much as 68 percent of the population fell below the national poverty line, living on less than K4,000 per day. Health care has become inaccessible to many yet at the same time its quality has continued to deteriorate over the years. Therefore, signs of distress or low welfare in the form of malnutrition, disease, illiteracy, ragged clothing and dirty conditions are everywhere to be seen.

Equally, incidences of HIV/AIDS, which can be attributed to poverty, and whose prevalent rate among the sexually active age group is 16%, has made it difficult to adequately reduce poverty levels. Besides contributing to food insecurity at household level, particularly female headed households, the problem of women as victims of HIV/AIDS epidemic also has important repercussions such as burden of care for the sick and the fact when women themselves are sick, they have no body to look after them. Further, HIV/AIDS does not only cause poverty at household level, but also poses serious challenges to the economic recovery as it is killing people in the most productive sector of the labour force. In addition, with AIDS expenditures rising, HIV/AIDS will inexorably consume more resources than other diseases. Women, especially the female-headed households, have shared the burden of the increased poverty levels more disproportionately than the men. The dominance of women among the poor has resulted in the feminization of poverty, and very high effective dependency ratios among women. In addition, women dominate the coping strategies that have been devised over the last decade or so, which have been necessitated by macroeconomic changes and the impact if HIV/AIDS.

With regards to Rural – Urban dichotomy, the Living Conditions Monitoring Survey of 1998 showed poverty to be at 73 percent, with the majority of the poor living in rural areas and engaged in small scale farming activities. The current LCMS (2004) still shows the same situation. However, the level of people below the poverty line has reduced to 67 percent. Of this proportion, the extremely poor account for 46 percent, while the moderately poor were 21 percent. There was higher poverty in rural areas at 74 percent and 52 percent in the urban areas. The state of Zambia’s rural areas is a sorry sight of failed development. Rural areas are poorly serviced by economic infrastructure and social services. Rural productivity has tended to stagnate due to a host of reasons which have included archaic technologies, lack of agricultural credit, non-existent extension services and an erratic supply of inputs combined by poorly developed markets for agricultural produce.

However, poverty has also impacted relatively on the urban population. Zambia has been, as illustrated by current statistics, a country with a high urban population resident in low cost areas without adequate water and sanitation. The poverty situation of the low cost urban areas has mainly been attributed to the policy of economic liberalisation. The economic policies of the 1990s, privatisation and consequent job redundancies, removal of subsidies in the agricultural sector all colluded to impact negatively on both the rural and urban populations creating significant deprivations and reducing opportunities and access to basic services. Other reasons for development losses were the failure of investments through poor public spending and budget constraints in the 1980s and 1990s. In addition, most of these areas have inadequate or complete lack of water supply, sanitation, schools and health facilities. Public services are very limited and yet population remains very high. It is in these areas where poverty has assumed an inter-generational aspect. These areas continue to experience perennial outbreaks of diseases such as cholera.

2.0. METHODOLOGICAL APPROACH

In developing this paper a review of available literature from national and international sources on the relationship between legal empowerment and poverty in the Zambian context was undertaken. The desk research was complemented by semi-structured interviews with key stakeholder groups and collection of experiences from people in the field that represent constituencies and specific vulnerable groups in the informal economy. Face-to-face interviews were conducted with various institutions and individuals. These include Transparency International Zambia (TIZ), legal Aid Department, Young Women Christian Association (YWCA), Non-Governmental Organization Co-ordinating Council (NGOCC), Legal Resources Foundation, Law Association of Zambia, Women for Change and Women in Law and Development in Africa (WILDAF).

A detailed list of organizations and individuals interviewed is appended as annex 1 of this report. The face-to-face interviews were supplemented with a questionnaire which was distributed to the relevant justice and civil society organizations and individual citizens. In order to reach all the relevant organizations dealing with access to justice, purposive sampling was the technique employed in gathering mainly qualitative data. Many of the organizations targeted were of relevance to the study in that they had both a rural and urban presence; therefore they provided valuable insights into the situation on the ground. The focus of the interviews and administration of the questionnaire was on institutions and individuals that are relevant to access to Justice and the Rule of Law. Some of the institutions interviewed are those responsible for assisting women and men get fair treatment before the law

3.0. CONTEXT SETTING

As a preamble to the discussion on Access to Justice, the context relating to the definition of the concept of Access to Justice is presented. Further, the legal provisions which promote access to justice in Zambia are highlighted together with the system for administration of justice.

3.1. CONCEPT OF ACCESS TO JUSTICE.

The purpose of this paper is to establish a basis for discussions among the stakeholders in Zambia by providing an overview of local experiences on Access to Justice and the rule of law. Ultimately, the objective is to generate dialogue regarding policy recommendations that respond to Zambian reality in the realm of Access to Justice and the Rule of law. In so doing, it is necessary at the outset to investigate and interrogate the concept of Justice itself. Access to justice rests on three foundations: substantive law, legal institutions and legal services. First, the substantive law must advance appropriate norms that promote productivity, efficiency and social justice.⁴² If they do not, then improving access to the legal system cannot be counted as improving access to justice. Secondly, the institutions that develop, apply and enforce the law-especially, but not exclusively the courts- must be competent, impartial, efficient and effective.⁴⁴ Access to an unjust legal system is not access to legal justice, no matter how fine the laws on the books. Third, potential users of the legal system must be able to rely on an efficient and equitable system for producing and allocating legal services. The first two foundations of access to legal justice emphasize the element of “*access*”. It is important to note in relation to the third foundation that most of the people cannot use the legal system effectively without the assistance of specialist legal service providers. Without access to such providers, access to legal justice system is difficult or impossible.⁴⁷ The tripartite categorization of the three foundations of access to justice should not obscure the fact that these three aspects of access to legal justice are interdependent. For example, legal and judicial institutions not only administer the law, but they help shape and create the law (even if this law-creation process is sometimes characterized-fictitiously-as “*applying*” or “*discovering*” the law).⁴⁸

The main focus on access to justice and rule of law therefore is the creation of an efficient, effective system for delivering legal services. What therefore is the problem with regard to access to legal justice? Many poor people do not use the legal system because they believe often correctly – that the legal system will not provide them with an effective remedy for their problems. It is beyond serious dispute that many poor people who might otherwise avail themselves of the legal system to resolve disputes and advance their interests do not do so because they lack the time, resources and expertise necessary to navigate the legal system on their own, and there are not able to source the assistance of a legal services provider who could help them.

3.2. PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

The protection of fundamental rights of citizens and residents is the cornerstone of the Constitution of Zambia. The basis of fundamental rights is laid out in part three of the Constitution. It is recognized and declared that every person in Zambia is entitled to the fundamental rights and freedoms of the individual. That is to say, the right whatever his race, place of origin, political opinions, colour, creed, sex or marital status to each and all of the following. Namely:

- (i) life, liberty, security of the person and the protection of the law;
- (ii) freedom of conscience, expression, assembly, movement and association;
- (iii) protection of young persons from exploitation; and
- (iv) protection for the privacy of his name and other property and from deprivation of property without compensation.

The Constitution guarantees the protection of the law and treatment in accordance with the law when it provides that every person charged with a criminal offence:-

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail of the nature of the offence charged;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall 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 or at his own expense, by a legal representative of his own choice,
- (e) shall be afforded facilities to examine in person or by his legal representative the witness called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the charge.

3.2.1. Overview of women's legal rights

Zambia has a dual legal system, which allows application of both the customary and statutory laws in civil and personal cases. The Constitution of Zambia guarantees that every person in the country shall enjoy certain rights and freedoms, irrespective of sex, race, creed, colour, religious belief or political opinion. Unfortunately, the same Constitution allows customary law to run side by side with statutory law in matters that deal with personal status, marriage, divorce and inheritance rights. This means that such cases can be decided according to state law or according to the customary law that applies to the litigants. It is important to note that Customary law varies between one tribe and another, but the one common factor is that it legalizes discrimination against women. Since several injustices against women are committed in the name of culture, and there is a general lack of legal literacy coupled with inbuilt weaknesses in the institutional and legal frameworks.

It is evident in Zambia that matters of customary law are often trivialized, as the local and subordinate courts that administer customary law, treat women as minors or appendages of their husbands or male relatives. Additionally, Article 23 of the amended 1996 Constitution purports to protect citizens from discrimination on grounds of sex and marital status but it includes a clause, which exempts all forms of discrimination arising from customary, family and personal law. In this way, the constitution serves to legalize discrimination in wide areas of administrative and social practice hence entails an internal legal contradiction within the Constitution itself.

3.3. ADMINISTRATION OF JUSTICE

The administration Justice involves several institutions, both governmental and non governmental. These institutions will be considered in the succeeding sections.

3.3.1. Judicature

In a constitutional democracy, courts play a key role as independent and impartial arbitrators in promoting the rule of law.⁵⁴ Constitutional democracy demands that all those who are entrusted with exercise of public power should do so in a manner consistent with the principles of legality. It is the duty of the courts to ensure that there is compliance with laid down rules and procedures.⁵⁵ The judicature of Zambia is a creation of the Constitution. It consists of the Supreme Court, High Court, Industrial Relations Court, Subordinate Courts, Small Claims Court (not yet operationalized), and the Local Courts. The Judicature is administered in accordance with the Judicature Administration Act. The Act is intended to strengthen the autonomy and independence of the Judiciary. The Judicature is headed by the Chief Justice. However, the day to day management of the Judiciary is undertaken by the Chief Administrator.

In order to seek redress in a court of law or resist a legal suit, any person has the liberty to initiate legal process or defend himself or herself in the Local Courts, Subordinate Courts or the High Court. These are courts of first instance. Namely, legal process can be initiated in the courts outlined above. However, the laws establishing the courts prescribe the Jurisdictional limits of each of the courts. The Jurisdictional limits are defined in terms of the subject matter as well as quantum of the claims or suit.

The local courts comprise the base of the hierarchy of the Judicature. The local courts are presided by lay persons - that is persons who are not trained in law. The procedures in the local courts are informal and simple. The local courts are very popular and easily accessible by the poor. The Subordinate Courts are presided over by both lay and professional Magistrates. The procedures in the subordinate courts are formal.

The High Court has original and unlimited jurisdiction. The High Court presided by professional Judges. The procedures are formal and complex. Persons who resort to the High Court are usually represented by counsel. The Supreme Court is the highest court of the land. It is an appellate court, save in relation to Presidential election petition.

Except for the local courts, the procedures in the courts of law tend to be formal and rigid and therefore presupposes knowledge of both substantive and procedural law. This knowledge is invariably provided by sundry legal provisions. Typically legal providers include private legal practitioners, Government lawyers employed by the Legal Aid Board and non-governmental organizations such as the Legal Resources Foundation (LRF) and National Legal Aid Clinic for Women (NLACW).

3.3.2. Ministry of Justice

The Ministry of Justice has two chambers. namely, the Attorney General's (AG) and the Director of Public Prosecutions. Both chambers are constitutional in character. The Ministry has departments structured along constitutional and statutory mandates. The Ministry of Justice superintends three statutory bodies namely, the Zambia Law Development Commission (ZLDC), Zambia Institute of Advanced Legal Education (ZIALE) and Legal Aid Board. The Ministry also houses the Governance Development Unit (GDU) created following the adoption of the National Capacity Building Programme for Good Governance in Zambia by cabinet in March 2000. The GDU has been transformed into a "*Governance Secretariat*" based on the Fifth National Development Plan launched in early 2007.

During the Transitional National Development Plan (TNDP) in 2005, the Ministry of Justice embarked on policy formulations in the areas of prosecution and legal-aid. However, the absence of policy framework for the (DPP) Chambers and the Legal Aid Board continued to undermine the proper administration of prosecution and legal Aid services respectively. For instance, the DPP's chambers are established under aegis of the Ministry of Justice. The DPP's chambers are not organizationally autonomous and are not adequately funded. Furthermore, the chambers are understaffed. The absence of a policy framework for both the DPP's chambers and the Legal Aid Board, therefore, affects the quality of services offered. Inefficiency in the DPP's chambers and the Legal Aid Board has direct bearing on the disposal of criminal cases and limits access to free legal services by the poor.

Institutional reforms to improve the administration of justice also included the transformation in 2001, of the Juvenile system to conform to international standards. However, poor institutional co-ordination and linkages between the Ministry's departments and statutory bodies and other institutions within and across the Governance sector have affected the Ministry's performance in terms of the time it takes to dispose of matters and the complete assignments.⁶²

3.3.3. Director of Public Prosecutions

In Zambia the power to institute and undertake criminal proceedings is vested in the Director of Public Prosecutions (DPP). The office is created by the Constitution. The DPP is appointed by the President subject to ratification by the National Assembly. The functions of the DPP are to:

- (a) institute and undertake criminal proceedings against any person before any court other than a court martial;
- (b) take over and continue such criminal proceedings as have been instituted by any other person or authority; and
- (c) discontinue at any stage of before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

There have been public concerns with the quality of prosecution services in the country. Delays in disposal of criminal cases, congestion in remand prisons and high levels of acquittals have been cited as evidence of inefficiency in the prosecution service.⁶⁶ 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.⁶⁷ 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.⁶⁸

The Draft National Criminal Prosecution Policy recommends that Government should:

- (i) legislation is enacted to establish an independent National Prosecution service;
- (ii) the prosecution function is separated from the investigative function and to this end the appointment of police officers as prosecutors should be discontinued; and

- (iii) the Zambia Police Service, ACC, DEC and other law enforcement agencies should have public prosecutors working on secondment from the DPP's office to deal with cases as they arise and thereby reduce the delays occasioned by the transfer of cases to the DPP's office for legal advice or consent to prosecute.

Although the draft National Criminal Prosecutions Policy was concluded in March 2002, the draft document has not yet been finalized. However, from the recommendations made in the draft policy, it is clear that the policy only seeks to promote formal access to justice. There is no attempt to recognise the importance of informal justice systems that continue to exist in the peri-urban and rural areas.

3.3.4. The Legal Aid Board

The Legal Aid Act⁷⁰ was enacted on 20th November 1967. The objective of the Act is to provide for legal aid in civil and criminal matters and causes to persons whose means are inadequate to enable them to engage practitioners to represent them. The Directorate of Legal Aid Board operated as a department within the Ministry of Legal Affairs and consequently enjoyed limited autonomy. However, by the Legal Aid (Amendment) Act the Legal Aid department was transformed into a Legal Aid Board. The Legal Aid Board comprised the following part-time members appointed by the Minister:⁷³

- (a) a person qualified to be a Judge of the High Court who shall be the Chairperson;
- (b) a representative of the Law Association of Zambia;
- (c) the Permanent Secretary in the Ministry responsible for legal affairs;
- (d) a representative of the Ministry responsible for Home Affairs;
- (e) the Director who shall be an ex officio member;
- (f) a representative of a non-governmental organization active in the promotion of human rights; and
- g) one other person

Furthermore, the Legal Aid (Amendment) Act defined the functions of the Board as being to:

- (a) manage and administer the Legal Aid Fund; and
- (b) to carry out any other activities relating to the provision for legal aid which are necessary or conducive to the performance of its functions under the Act.

There was however a proviso placed on this function, namely, 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 it is usual for boards of corporate bodies to superintend secretariats or directorates. A further amendment was made to Legal Aid legislation in 2005. By the Legal Aid (Amendment) Act, the Legal Aid Board was re-constituted 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 and sport and child development.

Furthermore, the functions of the board were reformulated and enlarged. The functions of the Board are to:

- (a) administer and manage the Legal Aid Fund;
- (b) facilitate the representation of persons granted legal aid under the Act;
- (c) assign practitioners to persons granted legal aid under the Act;
- (d) advise the Minister on policies relating to the provision of legal aid and implement government policies relating to the same; and
- (e) undertake such other activities relating to the provision of legal aid and which are conducive or incidental to the performance of its functions under the Act.

Although the Legal Aid Board has been established as a body corporate, it has not been delinked from the Ministry of Justice. The Ministry still recruits, disciplines and determines the conditions of service for legal aid personnel. The Ministry is also still responsible for mobilizing and disbursing resources to the Board. The delinkage is important in order to establish an independent body that can effectively plan for expansion, hiring and retention of staff as well as mobilize resources from either Government or cooperating partners. The formality surrounding the Legal Aid Board still makes it difficult for the ordinary person to easily approach the Board.

The Legal Aid Board has offices in Lusaka, Kitwe, Ndola, Kabwe and Livingstone. It has on its establishment a total of twenty-one lawyers, out of an establishment of thirty four.⁷⁹ The lawyers for the Board are faced with crashing caseloads. Apart from facing a critical shortage of staff, the Board has inadequate transport and operational tend to suffer. In view of the preceding constraints, the Board tends to limit the grant of legal aid to accused persons facing serious criminal cases mostly in the High Court. The Board therefore handles a very limited number of civil cases. The woes of the Board are also worsened by the fact that the Board is unable to attract and retain lawyers due to the poor conditions of service. The failure to decentralize the Board and its myriad of administrative and logistical problems has resulted in denying many indigent persons especially in rural areas legal aid.

3.3.5. Small Claims Courts

There is on the Zambian statute books the Small Claims Court Act. The objective of the Act is to provide for the establishment, of Small Claims Courts to be situated in areas to be designated by the Chief Justice. The Small Claims Courts adopt arbitration as a mode of resolving disputes. The choice of this mode of dispute resolution is questionable because arbitration is typically adjudicative and is quite formal. Mediation would probably have been a more apt mode of resolving disputes in the Small Claims Courts. The tragedy of the Small Claims Court legislation is that although the legislation has been on the statute books for over a decade, the Small Claims Courts have not yet been operationalized. However the idea of Small Claim Courts is a very good one. It depends on involvement of legal practitioners of 5 year standing with more personnel allocated to them. The Small Claims Court could utilize existing infrastructure such as school buildings, community halls and several others. If the existing mechanisms of resolving disputes in both rural and urban areas are adopted but also adapted to suit the needs of the poor the small claims court could work most effectively. Rules that normally apply to formalized courts should be more flexible to enable the poor

access justice. Certain positive elements of the procedures followed in traditional courts should be utilized in urban areas also so that access can be increased.

3.3.6. Prison Services

The Zambia Prison Service is established under the Prison's Act. The object of the Prisons Act is to provide for the establishment of a prison service for the management and control of prisons. There are fifty-three prisons, ten medium security prisons and three remand prisons. There is one reformatory school. The prisons hold 14 894 inmates.⁸² 6,0730 of these are convicted and 8,164 are on remand.⁸³ 207 are prohibited immigrants.⁸⁴ Thus, one third of the prison population is on remand. The remandees are kept in overcrowded prisons and are held together with convicted criminals under extremely inhumane conditions.⁸⁵ The inhumane conditions violate the Constitutional provisions which proscribe any person from being subjected to torture or inhuman or degrading punishment or other like treatment

Given the above scenario facing the remandees, it can be deduced that justice has not been applied in that they are incarcerated under the same inhumane conditions that convicted persons are being held when they have not even faced trial yet. It is worse for the poor because they have limitations when it comes to paying bail or settling for police bond. The poor have been known to lack working sureties and resources with which to bail themselves out. Women in particular face problems when they are dependent on their male relatives or husbands for support as help may depend greatly on how good the existing relationship between them is. There is evidence from the peri-urban areas which shows that women are usually less empowered economically than men so they are more likely to face challenges in accessing justice.

3.4. ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

Significant strides have been made in the promotion of Alternative Dispute Resolution (ADR) mechanisms in the country. The initiative to introduce ADR was spearheaded by the Judiciary, LAZ and the Zambia Chamber of Commerce and Industry(ZACCI).The initiative that began in earnest in 1997, was supported by the United States Agency for International Development USAID and the Swedish International Agency for Development (SIDA). Over a period close to ten years, a Zambia Centre for Dispute Resolution Limited (ZCDR) and Zambia Association of Arbitrators (ZAA), have been established as institutions responsible for the promotion and development of ADR in the country. Alongside the institutional development, an archaic Arbitration Act was repealed and replaced by an Arbitration Act⁹⁰ fashioned along the lines of the United Nations Commission on International Trade Law (UNCITRAL) model law. A court annexed mediation programme was also introduced on 28th May 1997, in the High Courts at Lusaka, Ndola, Kitwe and Livingstone.⁹¹ Mediation however, is only practiced in the High Court. There is really no justification or reason why mediation should not be practiced in the lower courts.

3.5. PRO BONO SERVICES

In order to ameliorate the prohibitive costs of legal services and generally improve access to justice for the poor, Non-Governmental organizations (NGOs), have been formed to provide pro-bono or free legal services. To this end, the principal organizations are the National Legal Aid Clinic for Women (NLACW) and the Legal Resources Foundation (LRF). NLACW was established in 1990, as a project under the Women's Rights Committee (WRC) of the Law Association of Zambia (LAZ). LAZ is membership and professional organization for lawyers

in Zambia. The mandate of LAZ includes the development of law as an instrument of social order and Justice.⁸⁷ In addition, lawyers are encouraged as individuals to identify themselves with the people and utilize their skills in the development of society and its institutions.⁸⁸ NLACW was established to provide affordable legal aid to women and children from marginalized social sectors. These would not usually afford the normal legal costs to hire a legal practitioner to represent them.

3.5.1. National Legal Aid Clinic for Women

NLACW has offices in Lusaka, Livingstone and Ndola. Currently, only six lawyers are on its establishment. The capacity of NLACW to provide significant relief to the poor is highly limited. NLACW is also donor dependent and lacks logistical support that is necessary to meet the challenges of providing legal services to the poor. Supporting NLACW by providing more resources to enable it recruit and retain a larger team of lawyers to be put at the disposal of the rural and urban poor women would help them carry out their duties more effectively. Other logistical support may include assisting the NLACW to establish strong linkages countrywide where they could utilize the Small Claims Court concept operating from buildings belonging to other institutions. Other forms of support could include materials such as networked computers, motor vehicles and mobile office facilities. Due to the nature of the cases handled by NLACW support with provision of adequate social workers would be an additional advantage to take care of the needs of the poor women. Expansion of the activities and infrastructure of the NLACW to both rural and urban areas would be a critical step in increasing access to justice for the majority poor and vulnerable women.

3.5.2. Legal Resources Foundation

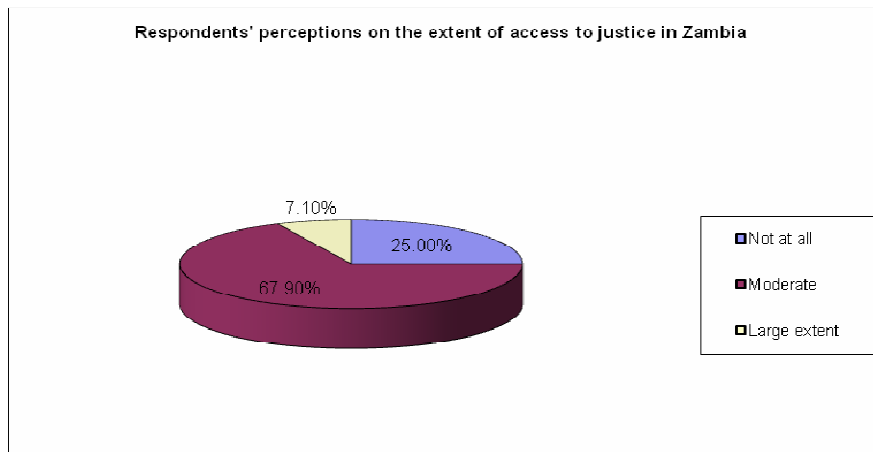
The Legal Resources Foundation (LRF) is an indigenous NGO established in 1991, to promote and protect human rights principally through the provision of legal aid services to the poor. LRF has pioneered community based legal advice centres; the prisons legal assistance project that targets prisoners, prohibited immigrants and refugees. The primary goal of LRF is to supplement the chronically understaffed Legal Aid Board in the provision of legal services to the poor. Although LRF runs a legal aid programme, it is also engulfed with a myriad of problems. Firstly, there is high turn over of lawyers due to poor conditions of service offered to its staff. Secondly, LRF operates from rented premises which they cannot easily transform to suit the spatial needs of their clientele. There is also the potential risk of constantly changing offices depending on existing relationships with the owner of the building. This constant change of rented premises could easily affect the access of the general public to LRF who may not be able to find the new premises. Thirdly, LRF has a poorly stocked library. Lastly, LRF has inadequate transport to meet the challenges of providing legal aid.

3.5.3. Challenges of Pro-bono services

Pro-bono services are actually available to any person meeting the set criteria for example someone who is not in gainful employment. However there are limitations in terms of lack of decentralization of the services by those institutions providing them. Most institutions are only located in a few selected urban areas, limiting access by the rural poor. The other challenge is that some poor people may lack information about the available services and requirements for them to obtain assistance from these institutions.

4.0. HOW ACCESSIBLE IS JUSTICE IN ZAMBIA?

It is one thing to advocate and champion for the rule of law, and another thing altogether to make that law, and make it accessible to the people.⁸⁶ A field survey was conducted and involved about 20 organisations and individual respondents involved in various development work which is related to access to justice. Annex 1 provided details of the respondents. However, the results from the survey indicated that more than 67% of the mixed group of respondents that were interviewed using semi-structured interviews and the questionnaire indicated that there was moderate access to justice while 25% said there was no justice for the poor, as shown in the pie chart below. Only 7% of the respondents said that there was access to justice for all categories of people. It was observed that this view mostly came from some representatives of institutions which are mandated to ensure access to justice prevails.



Although the desired situation in 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. The table below gives highlights on the perceived causes of limited access to justice

Table: Reasons for Limited Access to Justice

	Frequency	Percentage	Valid Percentage	Cumulative Percentage
Cases not expedited/ high rate of violation of law	2	7.1	7.1	7.1
Courts slow, legal aid department Understaffed	4	14.3	14.3	21.4
Criminally abused have no support, inaccessible legal aid	1	3.6	3.6	25.0
Few justices/ accused overstay without trial due to lack of understanding of legal rights	3	10.7	10.7	35.7
High Legal fees systems not found in remotes areas	1	3.6	3.6	39.3
Some of individuals facing criminal offences bribe their way out	1	3.6	3.6	42.9
Not all cases/reported,	1	3.6	3.6	46.5
Obstacles include: distance, cost, lack of legal aid	1	3.6	3.6	50.1
Some cases take too long	1	3.6	3.6	53.7
Some people access representation from legal aid	1	3.6	3.6	57.3
High level of corruption affects access to justice	4	14.3	14.3	71.6
Justice structures concentrated in towns	3	10.7	10.7	82.3
Not aware of how to access justice by those in remote areas	5	17.9	17.9	100.0
Total	28	100.0	100.0	

4.1. LOW AWARENESS LEVELS

The findings showed that awareness levels about the availability of formal justice mechanisms are quite low among the poor and women. Knowledge is power. Therefore, if there is low level of awareness of the mechanisms of justice available and low rights awareness among the members of general public, then the right to Justice is as good as denied. Paradoxically, the laws of the land are of general application and yet the public is largely ignorant about 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 Chipata peri-urban compound both women and poor men testified to the use of religious institutions, their family members and an informal gender court existing in their community to settle various types of disputes. Apart

from these mechanisms interviewees reported having utilized the local courts a number of times. None of them spoke of the other courts. In rural areas, traditional courts such as the KUTA in western province are utilised mostly by people in the rural areas. The Zambian government recognizes the role of chiefs by an act of parliament. One key outcome of the study was that people especially the poor tended to feel comfortable with the types of dispute resolution mechanisms they were used to than going to formalized courts. The added advantage was that these informal mechanisms rarely involved people to travel beyond their own areas of residence. Although most people saw the need to go to court when they had a dispute, they categorically stated that they used family or community and church members as the first channel of resolving their disputes. They were aware about these channels therefore the poor utilize them more than other channels because they use a language they understand in their daily lives.

Low awareness levels of about the available services can be attributed to factors such as geographical location in remote rural areas, inadequate access to the media, prohibitive clauses within the provision of the law barring legal and paralegal institutions from advertising their services, low literacy levels especially among women, use of technical jargon in the published documentation and lack of translation into local languages.

Institutions working in the legal area are few in the country. Some of these institutions are government, non-governmental or paralegal institutions. Religious institutions help to promote justice by handling disputes from a religious perspective. Some church –based institutions such as the Catholic Commission for Justice Development and Peace, the Young Women Christian Associations and others work to address social, economic and even legal justice issues at the grassroots level. Most other institutions like NGOs and the Ministry of Community Development work to try and eradicate poverty in the country as a way of addressing justice. Unlike the institutions mentioned, these institutions tackle legal issues as they relate to their work.

4.2. LEGAL COSTS

A distinction needs to be drawn between court fees and legal practitioners fees. In general, court fees do not hinder access. What is prohibitive is the cost of legal representation. Given the serious limitations and constraints that the Legal Aid Board faces, most poor are unable to instruct legal practitioners to represent them in courts. The [table in annex 2](#) gives a breakdown of the court fees at the high court, supreme subordinate, industrial relations and commercial courts

4.3. PARA LEGAL SERVICES

Many poor people are unable to seek the services of legal practitioners because of the ‘exorbitant’ legal fees charged by legal practitioners. However, it is noteworthy that many interviewees identified the need for increasing availability of 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. Presently, access to the services provided by paralegal personnel is limited. Institutions providing para legal services are not only few, but are also in terms of operation restricted to designated districts and provincial capitals.

4.4. LANGUAGE AND COURT PROCEDURES.

The language and procedures employed in the Subordinate Court, High Court and Supreme Court are formal. The language barrier is however, mitigated by the availability of language interpreters. Translation does however also present the problem of distortion of evidence provided by an accused person or a witness. The procedures in the courts of law are rigid. The aura in the court rooms is simply intimidating to the uninitiated. The authority of Judicial officers is viewed with reverence. As a result, it is not uncommon for majority of the poor to subordinate and avoid higher courts in preference to the Local Courts where they are able to express themselves more freely in the local languages. The procedures in the Local Courts are informal and legal practitioners are not permitted to represent a party or parties before them.

4.5. LIMITED INFRASTRUCTURE

One of the most critical elements in ensuring access to Justice is the availability of infrastructure required for people to 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 of the courts is pathetic. Although the Government has embarked on a programme to rehabilitate infrastructure housing courts, accessing Justice will not be guaranteed unless a flexible and more innovative approach is adopted in the provision of court rooms. Table 2 shows that in the more rural provinces, there are more local courts than the urbanized ones. The reason could be that the urbanized areas have other court forms such as supreme and high courts. The table also indicates that people from the rural areas have greater access to local courts than other types of courts therefore the need to improve the operations of such courts.

4.6. DELAYS IN COURT PROCEEDINGS

The delays in disposing of cases discourages resort to courts of law. The time it takes for cases to be heard and disposed by the courts is of major concern. A major source of delays in disposal of cases are adjournments at the instance of either legal practitioners or the courts. It has been established in this report that the poverty in Zambia continues to be high and any delays in court proceedings could translate into uncomfortable legal costs which could inhibit some poor people from accessing justice.

Province	Grade of Court		Total
	A	B	-
Central	11	29	40
Copper belt	27	11	38
Eastern	16	57	73
Luapula	17	28	45
Lusaka	14	6	20
Northern	13	53	66
N.Western	9	38	47
Southern	13	36	49
Western	18	64	82
Totals	138	322	460

Table 2: List of Local Courts in Zambia as at 31st December 2006

Source: List of Local Courts as at 31st December 2006, Judiciary

4.7. FINANCING TO INCREASE ACCESS TO JUSTICE

It has been stated at the outset that the purpose of the Poverty Reduction Strategy Paper was multi-pronged. Notably, as the country generated more resources from the expanding economy, the need to commit better social services was recognized. The PRSP placed special emphasis on agriculture, tourism, transport and energy infrastructure for the productive sectors and education, health and HIV/AIDS, in connection with the social sector. Access to justice has never really been prioritized in the matrix of social services that need to be provided to the poor. Little wonder that the Legal Aid Board is poorly funded. The involvement of NLACW, LADA and LRF only, in the provision of legal aid equally demonstrates that civil society has not paid sufficient attention on improving access to justice by the poor. The FNDP has not yet been fully implemented therefore it would be too soon to comment on how it has successfully addressed the challenges associated with Access to Justice especially by the poor.

5.0. RECOMMEDATIONS

As a general conclusion, it is evident in this paper that while formal justice systems exists primarily in urban areas, there are a lot of issues which affect access to these systems by the ordinary persons from the urban areas and other poorer neighbourhoods. The local court system remains at the moment the available facility for the poor but it has its own limitations. There is little evidence to show that the Government has proactively considered traditional and often informal systems for settling disputes and allowing more people even the illiterate to access justice.

In order to improve access to justice and the Rule of Law, there is need to devise strategies and conditions for change. The following are the key recommendations made:

5.1. SUPPORT OF LEGAL AID INSTITUTIONS

There is need to inject sufficient resources in governmental and non- governmental legal aid institutions in order to improve access to justice by the poor. The myriad of problems experienced by the Legal Aid Board is a clear manifestation of the need for adequate 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 much similar fashion that Paralegals have been placed to work right in the community.

5.2. INFRASTRUCTURE DEVELOPMENT

The development and provision of infrastructure to host courts is a critical element in accessing Justice. Court space or rooms need not be stereotyped. Informal buildings would equally suffice in the dispensation of justice especially among the poor and rural population. Inevitably, a holistic approach should be adopted to ensure that recruitment and placement of judicial officers is done simultaneously with the expansion of court space where possible. There is also need to complement the efforts of NGO's in providing legal advice centres that would be manned by para legal personnel under the aegis of the ministry responsible for Community Development and Social Welfare. For instance, informal buildings could be constructed to operate as dispute resolution centers.

5.3. COURT PROCEDURES

There is need to depart from the formal and rigid modes of processing disputes. Development and popularization of alternative dispute resolution mechanisms that lays minimum reliance on lawyering skills need to be promoted. A classical example in this respect is the practice of mediation.

One of the issues identified by the study participants was the issue of delayed court processes which oftentimes deny justice to the accused. Criminal cases are essentially supposed to be disposed of within a period of one month while local court cases court take up to two months. The reality however is that some cases take much longer than this. Some people have in the past been incarcerated for periods longer than a year due to inability to transport witnesses from their locations to the courts. Courts beyond the local courts are not readily available especially to rural dwellers. Such people have to travel to the nearest urban areas to have a hearing. Most poor people are limited by lack of resources with which to make the necessary travels, therefore limiting their access to justice. Rural women in Zambia follow a culture of limited mobility outside their own home areas. This could have

serious effect on whether or not they end up taking their issues to courts far from their homes or not. Due to all these challenges many women reportedly stay away from getting recourse for their problems. Women interviewed from the peri-urban areas of Lusaka said that they preferred resolving conflicts as families or with any relevant body located in their residential area than for them to go to another place where there is a court.

5.4. PARA LEGAL STAFF

The use of Paralegals in facilitating second level access to justice, cannot be overemphasized. However, this use should be institutionalized and necessary guidelines developed to ensure professionalism in their work. There is need to institutionalize the training of para legal personnel. Para legal personnel have the potential and ability to impart both substantive and procedural law in a manner that is easily comprehended by the majority of the poor.

5.5. MENTORING OF PARA LEGAL STAFF

LAZ in its bid to make the skills of its membership to the people, should be engaged in the training and mentoring of para legal personnel, as well as development of resource materials to be used by para legal personnel.

5.6. CIVIL SOCIETY

There is need for Civil society to cultivate interest in issues relating to access to justice and the provision of legal aid to the poor. There are a number of Civil society organizations working in the rural area who could take on responsibilities for creating awareness on the existence of both formal and informal forms of access to justice. Civil society could also be key in documenting the different informal systems of access of justice. At the moment, there are no resources which clearly captures this information. Civil society can also be engaged in the education of the public about their basic rights and duties

5.7. NATIONAL PROSECUTIONS AUTHORITY

There is need to enact legislation to establish a National Prosecution Authority. The establishment of a National Prosecutions Authority will not only guarantee the autonomy of the DPP, but also improve the efficiency and effectiveness of the prosecution services in the country. However, the National Prosecutions Authority still remains a formal way of accessing justice and efforts should be made to recognise the informal systems of access to justice in the rural areas and see how this area can be strengthened. There maybe need to include within the remit of the National Prosecution Authority, activities which seek to strengthen the informal justice system.

5.8. CASE MANAGEMENT

There is need to improve case management within the Judiciary. Some of the inordinate delays in disposing of cases in the Judiciary are as a result of the absence of effective case management techniques. There is need to introduce electronic systems to assist in the monitoring of disposal of cases in the superior courts.

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5. Legal Aid (Amendment) Act Number 19 of 2005
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7. Local Court Chapter 29 of the Laws of Zambia.
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ANNEX 3: LIST OF INSTITUTIONS/ORGANISATION INTERVIEWED

List of Interview Respondents/Institutions

Name of Institution/Individual	Type of Interview held
Legal Resources Foundation	Questionnaire and Interview
Women for Change	Questionnaire
NGOCC	Questionnaire and Interview
WLSA	Questionnaire/Interview
Legal Aid Department	Interview /questionnaire
Law Association of Zambia	Questionnaire/Interview
Unicef Juvenile Justice Programme	Questionnaire/Interview
Civil Society for Poverty Reduction	Questionnaire
Victim Support Unit	Questionnaire
Young Women Christian Association	Questionnaire/Interview
Transparency International Zambia	Questionnaire/Interview
	Questionnaire
CCJDP	Questionnaire
Central Investigations Department	Questionnaire
Director of Public Prosecution	Questionnaire
National Legal Aid Clinic for Women	Interview/ Questionnaire
Individual lawyer	Questionnaire
Individual lawyer	Questionnaire
Individual Lawyer	Questionnaire
Ordinary citizen	Questionnaire
Ordinary citizen	Questionnaire/Interview
Ordinary citizen	Questionnaire/Interview
Acc Solwezi	Questionnaire
Acc Lusaka	Questionnaire
Ordinary citizen	Questionnaire/Interview
Ordinary citizen	Questionnaire/interview
Ordinary citizen	Questionnaire
ZP Public complaints Commission	

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ANNEX 4: INTERVIEW GUIDE

LEGAL EMPOWERMENT OF THE POOR

Semi-structured Interview Guide for Access to Justice and Legal Empowerment of the Poor Discussions with Organizations

1. What is your understanding of access to justice?
2. What are the formal and informal justice systems that cater for the poor women and men in Zambia?
3. What has been the effectiveness of each of these systems in delivering access to justice for the various categories of people especially women, children, the poor and other excluded groups of people?
4. To what extent are the majority of people utilizing the existing legal systems as a basis for increasing their access to vital resources such as land?
5. Are there any examples of informal sector mechanisms for increasing access to assets by the poor?
6. What should be the relationship between the formal and informal/traditional/customary means of settling e.g. land disputes?
7. What are the major barriers to access to justice especially among women, children and the poor?
8. What issues do the poor, women and children seek access to justice for and how easy is it for them to table sensitive ones?
9. What strategies have been/should be used in Zambia to increase access to justice by the poor women and men?
10. How can the legal and judicial systems be made more transparent to enable stakeholders understand the operations of the two clearly and enable all including the poor to access them?
11. How possible is it to expand legal and judicial mechanisms for ensuring government remains accountable in the delivery of public goods and social services critical for the survival of the poor?
12. What role does your organization play in providing legal services to the poor and vulnerable? How should these Para-legal institutions relate with the professional bar (lawyers)
13. What has Zambia done to improve the way paralegals provide support and help in expanding access to justice? (Any legal and other provisions in place for instance the provision of incentives for lawyers to represent the poor by regulating the market?) How can dispute resolution mechanisms support the poor people' access to rights in affordable and locally appropriate ways?
14. What reforms would be needed to develop transparent legal and institutional arrangements relevant to the poor and where they can access justice from and which will contribute to a culture of fairness, equity and rule of law (e.g. is any documentation of recognition given for land traditional ownership?)

Issues for discussion with the Poor

1. What has been your experience regarding access to justice?
2. What sort of issues have you taken to the informal/formal courts?
3. How well do you think each system handled your case?
4. What problems did you encounter in getting recourse for your issues?
5. What should be done to improve the way issues are handled at the family, church or courts of law?

ANNEX 5: QUESTIONNAIRE

PATMAT LEGAL PRACTITIONERS

ACCESS TO JUSTICE

Questionnaire

Dear Respondent,

Messrs PATMAT Legal Practitioners are currently undertaking a study to assess access to justice in Zambia. The full study is made up of other thematic areas which are being done by other consultants. The results from each thematic area will be combined into one consolidated report. However, this questionnaire is only limited to addressing issues of access to justice especially by different categories of people.

You are, kindly, requested to assist PATMAT make a thorough assessment of the current situation regarding access to justice by filling out this questionnaire. All the information provided will be treated as confidential and will only be used for the intended purpose. Kindly note that you are under no obligation to give your name.

Organization: _____ Int. no: _____

Name of respondent (Optional): _____ Date: _____

Position: _____ Sex: _____

Age _____

Please tick or fill in where appropriate

1. What is your understanding of access to Criminal justice?

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2. To what extent do you think there has been Access to Criminal Justice in Zambia?

a) Not at all b) To a moderate extent c) To a large extent

3. Kindly state the reasons for your answer in 2 above

a).....
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b).....
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c).....
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4. What categories of people do not have access to Justice in Zambia?

a).....
b).....
c).....
d).....

5. List the key institutions that are utilized in managing the issue of access to Justice?

a).....b).....c).....
.....d).....e).....
.....f).....g).....

.....h).....i).....j).....
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6. Using the table below, kindly assess the strengths, weaknesses and effectiveness of these institutions in handling issues of access to Criminal justice?

Institution	Strengths	Weaknesses	How effective
a)			
b)			
c)			
d)			
e)			
f)			

g)			

7. Are there other informal structures like NGOs, religious institutions and traditional ones concerned with increasing access to justice for various groups of people?

- a) Yes b) No

8. Kindly list them if not already done in 6 above, and assess their capacity to deal with access to justice by entering low, medium or high

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9. What are the barriers to access to Justice?

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10. What *has been done* to overcome these barriers?

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11. What else *can* be done to overcome the barriers?

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12. Which of the following International Conventions/ protocols on access to justice and related ones been ratified/domesticated?

Instrument	Ratified		Domesticated	
	Yes = Y	No = N	Yes = Y	No = N
African Charter on Human & Peoples Rights (1981)				
UN standard Minimum Rules for the Administration of Juvenile Justice (Beijing rules, 1985)				
Conference on Security, Stability, Development and Cooperation (CSSDCA)				
The Kampala declaration on the Prison Condition in Africa (1996)				
UN and AU Anti-corruption Codes				
Universal Declaration on Human Rights (1948)				
Others				

Thank you for taking your precious time to answer the questions!