



**USAID**  
FROM THE AMERICAN PEOPLE

# ZAMBIA RULE OF LAW ASSESSMENT

**JUNE 2009**

This publication was produced for review by the United States Agency for International Development. It was prepared by DPK Consulting – A Division of ARD, Inc.

# ZAMBIA RULE OF LAW ASSESSMENT

**Program Title:** USAID/Rule of Law Assessment

**Sponsoring USAID Office:** Rule of Law Division, Office of Democracy and Governance, USAID (DCHA/DG/ROL)

**Contract Task Order Number:** #DFD-I-00-04-00173-00, Task Order #5

**Contractor:** DPK Consulting – A Division of ARD, Inc.

**Date of Publication:** June 11, 2009

**Authors:** Assessment Team: James Michel, Margaret O'Donnell, Margaret Munalula

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

# CONTENTS

<b>ACRONYMS.....</b>	<b>iii</b>
<b>EXECUTIVE SUMMARY.....</b>	<b>v</b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. THE CONTEXT FOR RULE OF LAW DEVELOPMENT IN ZAMBIA.....</b>	<b>2</b>
A. THE COUNTRY AND ITS PEOPLE.....	2
B. ROOTS OF THE LEGAL SYSTEM.....	3
C. CURRENT ISSUES AND TRENDS.....	6
<b>III. ROLES AND INTERESTS OF MAJOR STAKEHOLDERS.....</b>	<b>8</b>
A. THE GOVERNMENT.....	9
B. THE JUDICIARY.....	10
C. THE LEGAL PROFESSION.....	10
D. CIVIL SOCIETY.....	11
<b>IV. THE JUSTICE SYSTEM.....</b>	<b>12</b>
A. THE NORMATIVE FRAMEWORK.....	12
B. THE JUDICIAL SYSTEM.....	14
C. LEGAL AGENCIES OF THE GOVERNMENT.....	17
D. THE LEGAL PROFESSION.....	19
E. LEGAL ASSISTANCE AND REPRESENTATION FOR THE POOR.....	19
<b>V. ESSENTIAL ELEMENTS OF THE RULE OF LAW.....</b>	<b>20</b>
A. ORDER AND SECURITY.....	20
B. LEGITIMACY.....	21
C. CHECKS AND BALANCES.....	22
D. FAIRNESS.....	23
E. EFFECTIVE APPLICATION OF THE LAW.....	25

<b>VI. CURRENT PROGRAMS OF INTERNATIONAL COOPERATION.....</b>	<b>26</b>
A. USAID.....	26
B. OTHER US GOVERNMENT PROGRAMS.....	28
C. OTHER INTERNATIONAL PROGRAMS.....	28
<b>VII. FUTURE STRATEGY FOR USAID.....</b>	<b>30</b>
A. PRINCIPAL RULE OF LAW ISSUES.....	30
B. THE POTENTIAL FOR USAID ENGAGEMENT.....	31
C. RECOMMENDATIONS.....	32
D. CONCLUSION.....	35

**TABLES**

IV-1 NATIONAL BUDGET FOR PRINCIPAL JUSTICE SECTOR AGENCIES, 2009.....	13
IV-2 COURT PERSONNEL, 2009.....	16
IV-3 CASE FILINGS AND DISPOSITIONS, 2008.....	17

**ANNEXES**

1. STATEMENT OF WORK.....	36
2. BIOGRAPHIC SUMMARIES.....	42
3. BIBLIOGRAPHY.....	43
4. PERSONS INTERVIEWED.....	47
5. ISSUES PAPER ON ACCESS TO JUSTICE PROGRAM.....	50

## ACRONYMS

AGOA	African Growth and Opportunity Act
ASAZA	A Safer Zambia Program, USAID
CARITAS	Network of national Catholic organizations focused on economic justice, peace-building, and human development
CCJDP	Catholic Commission for Justice, Development, and Peace
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination against Women
CLE	Continuing Legal Education
CRC	United Nations Convention on the Rights of the Child
DFID	Department for International Development of the United Kingdom
DPP	Director of Public Prosecutions
GTZ	Gesellschaft für Technische Zusammenarbeit, a German development cooperation entity
HIV/AIDS	Human immunodeficiency virus/acquired immune deficiency syndrome
ICITAP	International Criminal Investigative Training and Assistance Program, US Department of Justice
IJM	International Justice Mission
LAZ	Law Association of Zambia
LRF	Legal Resources Foundation
MCC	Millennium Challenge Corporation
MOJ	Ministry of Justice
NGO	Non Governmental Organization
NLACW	National Legal Aid Clinic for Women
OPDAT	Overseas Prosecutorial Development and Training, US Department of Justice
PAN	Paralegal Advisory Network
PEPFAR	President's Emergency Plan for AIDS Relief

ROL	Rule of Law
TI	Transparency International
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Program
US	United States of America
USAID	United States Agency for International Development
WB	World Bank
WLSA	Women in the Law in Southern Africa
YWCA	Young Women's Christian Association
ZIALE	Zambia Institute of Advanced Legal Education

## EXECUTIVE SUMMARY

Current US Government priorities in relations with Zambia include promoting economic growth, creating health and education opportunities, reducing the impact of HIV/AIDS, and enhancing governance and fighting corruption. The rule of law can be an important determinant of progress in all these priority areas. In early 2009 USAID/Zambia requested a rule of law assessment, based on the new USAID strategic framework, to analyze primary challenges and opportunities, propose a strategy for USAID programming, and link the rule of law to the above priorities. USAID issued a statement of work to Contractor DPK Consulting, a division of ARD, Inc. (DPK) to conduct the assessment with a three-member team. DPK's team began its work with an extensive review of background documentation. Field research was conducted through in-person interviews in Zambia in March 2009.

Zambia's legal system is the product of two distinct traditions: African customary law and English common law. The colonial authorities who introduced English law in the late 19<sup>th</sup> century also provided for the continued application of customary law and traditional courts to administer justice for the African population. Over time, the local courts applying customary law became integrated into the justice system under the leadership of the Chief Justice. Today, they operate alongside the formal courts that apply law based on the English common law system. Thus, Zambia retains a dual system for the administration of justice.

The assessment identifies a number of well-known concerns about the contemporary administration of justice in Zambia. These include:

- Many treaties to which Zambia is a party are unenforceable in Zambian courts for lack of implementing legislation.
- Many legislative proposals to strengthen the rule of law await the completion of slow and uncertain government review procedures.
- The constitutional practice of Presidential designations of "acting" Supreme Court judges, including temporary designations of Supreme Court judges who have reached mandatory retirement age, is widely seen to undermine judicial independence.
- Inadequate resources for the judiciary impede recruitment of highly qualified judges and staff, increase vulnerabilities to corruption, and inhibit the development of training, research, and management systems. The local courts are especially affected by underinvestment. Financial shortfalls also affect other institutions in the justice sector, including the police, public prosecutors, legal aid providers, and the prison service.
- In the Zambian courts, both civil and criminal cases incur unreasonable delays due to complex procedures, lax case management, lack of performance management, absence of recording equipment to create court records, and judicial vacancies. An overwhelming backlog of appeals delays unreasonably the finality of judgments and is cited as a factor in a perceived decline in the clarity and legal acuity of appellate decisions.

Some of these concerns are being addressed in ongoing deliberations on a new Constitution. Others are the subject of initiatives to improve efficiency and reduce delay, mostly under a government program entitled "Access to Justice." This program involves representatives in all

three branches of government as well as civil society organizations and enjoys international support.

The current initiatives indicate that major stakeholders are aware of the need for reform. However, the attention given to the various issues seems to lack a sense of urgency or full agreement on an integrated and coherent plan. Major stakeholders appear ready to pursue specific measures, but less prepared to give priority to a program of coordinated action to improve the normative framework and reform the institutions of the justice system. An overarching factor is the current uncertainty about global economic conditions beyond Zambia's control.

Given Zambia's history of a strong President, a clear signal of Presidential commitment will be important to the success of any sweeping approach to justice reform. Within the judiciary, a number of reform-minded judges are championing particular initiatives. However, judicial readiness to lead a coherent and coordinated reform effort involving numerous stakeholders is not clearly evident. The organized bar plays a generally positive role and will have an important part in efforts to strengthen the rule of law. The private sector's principal concern appears to be the burdensome licensing and other administrative procedures involved in doing business. Efforts to strengthen the justice sector would find private sector support. Within civil society, the most lively, productive, and assertive reform advocates are the NGOs concerned with the provision of legal services. Among other things, a number of NGOs are collaborating in an effort to expand the efficacy and availability of paralegals throughout the country. However, there is a climate of distrust between the NGOs and the Government.

The USAID strategic framework identifies five elements which "must be present for the rule of law to prevail." While necessarily based on imperfect knowledge, the assessment team's judgments about these elements in the case of Zambia are as follows:

- **Order and Security.** Zambia is a peaceful country with a sense of order. There is relatively little violent crime. The country's tranquility could be threatened by the perpetuation of longstanding discrimination against women and disregard of their human rights. Another potential threat is the large youth population for whom adequate alternatives to the criminal justice system are not in place. The most serious threat to order and security is the possibility of public unrest arising out of dissatisfaction with governance under the historic pattern of concentrated political power.
- **Legitimacy.** The normative framework of governance enjoys broad respect. The customary law is popular, based on respect for centuries of tradition and compatibility with a shared preference for reconciliation over "winning" a conflict. The institutions that implement the law enjoy less legitimacy. There is public skepticism about the motives underlying government decisions.
- **Checks and Balances.** The constitutional structure of three branches of government, in practice, tends to facilitate a concentration of power in the executive. The President has broad powers that permit him to have influence over both the legislative and judicial authorities. In addition, individual rights protections in the Constitution are subject to derogation. On the whole, it appears that recent practical advances in judicial independence are not yet fully reflected in the existing legal framework.
- **Fairness.** There is broad respect for law and the courts command higher respect than most other public institutions. Yet, weaknesses in the performance of the justice system,

widespread poverty, and limited resources for investment in access to justice combine to raise serious issues. The poor cannot afford lawyers; formal courts are located at great distances from many rural communities; access to legal services is quite limited. Procedural fairness is impeded by the lack of a modern code of evidence and by the extraordinary delays in the judicial process. The perpetuation of historical gender discrimination is an additional source of unfairness in the administration of justice.

- **Effective Application of the Law.** Inadequate checks and balances and weaknesses in legitimacy and fairness of the justice system undermine the effective application of the law. The justice system's delays and uncertainties give rise to doubts as to the extent to which it influences behavior. It appears that a timely, efficient, independent, accountable, and accessible justice system would contribute more effectively to Zambia's capacity to meet the challenges of economic and social development and participatory governance.

Zambia is an aid-dependent country, receiving official development assistance that accounts for about ten percent of its Gross National Income. Little of this assistance is directed to the justice sector although the rule of law has implications for the effectiveness of international cooperation and is an important aspect of Zambia's development.

USAID annual assistance to Zambia is about \$300 million, mostly concentrated in the health sector, economic growth, and education. There is no current USAID program in the field of democracy and governance. Other US assistance to Zambia pertaining to the rule of law includes a recently concluded Millennium Challenge Corporation (MCC) Threshold Program, US Department of Justice support for investigation and prosecution of gender-based violence, and international visitors and exchanges.

The only current ongoing program in the justice sector involving other international cooperation partners is the Access to Justice Program, supported primarily by the Government of Denmark. The program's immediate focus is on criminal justice, with emphasis on the police, public prosecution and defense, the judiciary, and prisons. The Access to Justice Program has an ambitious work plan that seeks over the next three years to move toward a long-term, sector-wide approach to justice reform. Additional international partners are expected to add their support. It should also be noted that the Zambian Parliamentary Reform, now in its third phase, is receiving support from a number of cooperating partners, including UNDP, DFID, the European Commission, and Irish Aid.

The assessment team is concerned by the unreliable performance of the justice system in Zambia. Based on its research and interviews, the assessment team identifies the need for increased judicial independence as well as more accountability, equal treatment, and overall improved efficiency and effectiveness by the justice sector in order to increase checks and balances, legitimacy, fairness, and broad adherence to a culture of lawfulness.

There have been some encouraging efforts to address the widely recognized issues in justice sector performance and strengthen the rule of law. The greatest challenge is that there is not yet a consensus that improving the justice system requires urgent attention and substantial investment in the face of other national priorities. In these circumstances, a USAID rule of law program would best be directed toward fostering a greater readiness for coherent, Zambian-led justice sector reform. The objectives would be to support judicial interest in efficient self governance, encourage trends toward improved service delivery, and increase popular knowledge about legal rights and obligations and the operation of the justice system. This

approach would engage those within the justice sector, including in civil society, who have already demonstrated their interest in strengthening the rule of law.

A USAID rule of law program should avoid premature investments in proposed reforms for which Zambian readiness is not yet evident. By focusing on the elements of judicial governance, improved service delivery, and increased public knowledge, all consistent with the Government's Access to Justice Program, USAID can help to foster popular demand, institutional capacity, and political commitment. Specific programmatic themes should emerge from consultations with local stakeholders, taking into account US policy objectives such as aiding the competitiveness of business, combating gender-based violence, curbing the spread of HIV/AIDS, and controlling corruption. In addition, USAID assistance in the justice sector should be coordinated with international support for the Access to Justice Program. Such a focused approach at this time can lay the basis for a more robust initiative later if Zambian leadership and commitment to systemic reform of the justice system emerge in the future.

## I. Introduction

Zambia has taken important steps toward reversing the persistent decline in economic and social conditions that plagued the country since it gained independence in 1964. A significant factor in this progress has been the effort to strengthen the capacity and assure the integrity of Zambia's institutions of democratic governance. Indications of progress include modest but sustained economic growth over the past decade, reversals in the rate of poverty and in the rate of HIV/AIDS infections that have devastated the population, and impressive action to attack the corrosive influence of corruption.

The US has supported Zambia's development efforts. Zambia enjoys enhanced access to the US market under the African Growth and Opportunity Act (AGOA).<sup>1</sup> USAID programs support economic diversification and poverty reduction, health, and education. Under the President's Emergency Plan for AIDS Relief (PEPFAR), Zambia is a major recipient of assistance for an integrated program of prevention, care, and treatment. Another Presidential initiative, Women's Justice and Empowerment in Africa, provides training for police and prosecutors who are responsible for enforcing laws against gender-based violence, while also assisting in public education efforts and programs to help victims reintegrate into society. The USAID-managed MCC Threshold Program completed in 2008 has helped Zambia achieve a significant reduction in administrative corruption and improved effectiveness in selected public institutions. Zambia has now qualified for a compact under MCC criteria as a country that governs justly, invests in people, and promotes economic freedom.<sup>2</sup>

Current US Government priorities in relations with Zambia can be summarized as follows:

- To promote economic growth through trade and investment;
- To create health and educational opportunities to improve lives;
- To reduce the incidence and impact of HIV/AIDS; and
- To enhance governance and fight corruption.

The rule of law can be an important determinant of progress in all four of these priority areas. Consistency and predictability in the application of legal norms and speed and fairness in the resolution of business disputes can influence private sector decisions on trade and investment opportunities. The relationships between enforcement of women's legal rights and health and educational opportunities – including opportunities for AIDS prevention and treatment – are well documented. Enhanced governance and success in the fight against corruption depend upon the capacity of the justice sector to assure that public institutions and officials will be held accountable to the people under the law.

USAID has developed a new rule-of-law strategic framework to guide country analysis and USAID programming decisions. USAID has invited field missions throughout the world that may be considering rule-of-law programs to undertake assessments based on this strategic framework as an aid to informed decisions. USAID/Zambia responded to that invitation by

---

<sup>1</sup> See 2008 AGOA report to Congress at [http://www.ustr.gov/assets/Trade\\_Development/Preference\\_Programs/AGOA/asset\\_upload\\_file203\\_14905.pdf](http://www.ustr.gov/assets/Trade_Development/Preference_Programs/AGOA/asset_upload_file203_14905.pdf).

<sup>2</sup> See Zambia's 2009 scores on MCC indicators for satisfying compact eligibility criteria at <http://www.mcc.gov/documents/score-fy09-english-zambia.pdf>.

requesting an assessment focused on analyzing primary challenges and opportunities in advancing the rule of law, proposing a strategy for USAID programming, and linking the rule of law to the above-identified US Government priorities in Zambia. The statement of work for the assessment is at Annex 1.

Contractor DPK's team for the Zambia rule of law assessment was formed in February 2009 and consisted of James Michel (team leader), Margaret O'Donnell, and Mulela Margaret Munalula, joined by Sidney Watae, Democracy and Governance Officer in the USAID Mission in Lusaka. The team began its work in February 2009 with a literature review and key interviews in the US. The team conducted an intensive program of interviews and research in Zambia in March and completed the present report in April-June 2009. Biographical summaries of assessment team members are at Annex 2. A bibliography of principal sources of their research is at Annex 3. At Annex 4 is a list of persons interviewed in the course of the assessment.

## II. The Context for Rule of Law Development in Zambia

### A. The Country and Its People



Zambia is a landlocked country, surrounded by eight neighbors: Angola, Namibia, Botswana, Zimbabwe, Mozambique, Malawi, Tanzania, and the Democratic Republic of the Congo. Its size, at about 754,000 square kilometers (291,000 square miles), is slightly larger than the state of Texas.

Zambia's 12 million people represent more than 70 ethno-linguistic groups, primarily of the Bantu family. English is the official language, with a literacy rate in English exceeding 80 percent of the population. In addition, a wide range of traditional languages is spoken, especially in rural areas. More than one-half of the population is of the Christian faith. However, the Constitution protects freedom of religion and

many religions, including traditional beliefs, are practiced. Zambia is classified by the World Bank as a low-income country (per capita income of \$935 or less). About two-thirds of the population lives in poverty, and more than one-half in extreme poverty. Life expectancy is only around 40 years, due in large measure to an HIV/AIDS epidemic estimated to affect 15 percent of the adult population. More than one-half of the population lives in towns and cities.<sup>3</sup>

The present country of Zambia became an internationally recognized political entity through British colonization. Initially under the direction of Cecil Rhodes' British South Africa Company from 1891 to 1923, the territory was known as Northern Rhodesia. It became a Crown Colony under the direct jurisdiction of the Colonial Office in 1923. Then, in 1953, Northern Rhodesia (now Zambia) was combined with Southern Rhodesia (now Zimbabwe) and Nyasaland (now Malawi) in a Central Africa Federation.

<sup>3</sup> See Zambia Country Profile, World Development Indicators, World Bank, [http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=1&REPORT\\_ID=9147&REQUEST\\_TYPE=VI EWADVANCED&HF=N&WSP=N](http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=1&REPORT_ID=9147&REQUEST_TYPE=VI EWADVANCED&HF=N&WSP=N).

Colonial rule came to an end and Zambia became an independent country in 1964. From the beginning, President Kenneth Kaunda and his United National Independence Party dominated national politics. From 1964 until 1972, the country operated under a Constitution that, in principle, permitted political competition. A second Constitution, in force from 1972 until 1991, made one-party rule *de jure*. By the end of that period, continued economic deterioration and social unrest had made the existing political system untenable. The political crisis led to the adoption of a new constitution and the electoral success of a new political party, the Movement for Multiparty Democracy headed by Frederick Chiluba. Under President Chiluba, however, economic deterioration continued and the public was offended by corruption and a lack of social spending to relieve growing poverty.

Popular rejection of President Chiluba's effort to seek a third term in 2001 resulted in the presidency of Levy Mwanawasa, who took office in January 2002 after a controversial election that was condemned by international observers. President Mwanawasa surprised his critics by launching a vigorous anticorruption campaign (including a prosecution of former President Chiluba) and adopting economic policies that have accelerated progress in reversing Zambia's long economic decline. Upon President Mwanawasa's sudden illness and death in August 2008, he was succeeded by the former Vice President, Rupiah Banda. President Banda prevailed in a special election held in October 2008 to complete the term of presidential office that will expire in 2011.<sup>4</sup>

Under the present Constitution, the President is elected directly by universal suffrage to a five-year term and may be re-elected once. The President appoints a Vice President and cabinet ministers from among the members of the National Assembly. The National Assembly likewise is directly elected, but in addition to the 150 elected members the President may appoint up to eight additional members. The President also appoints judges of the Supreme Court and the High Court, as well as the Chair and Deputy Chair of the Industrial Relations Court, all subject to ratification by the National Assembly.

In 2007 President Mwanawasa created a National Constitutional Conference of more than 500 members to develop a new Constitution. The conference is currently receiving recommendations from its 11 committees. It has announced plans for popular consultations and has established a website to provide information to the public and receive comments and suggestions. The final text resulting from the deliberations of the Conference will be submitted to a popular referendum. It is widely expected that a new Constitution will be adopted prior to the presidential and legislative election scheduled for 2011.<sup>5</sup>

## **B. Roots of the Legal System**

Zambia's present legal system is the product of a history that includes two distinct legal traditions. In the pre-colonial period, each of the many ethnic groups in the territory of modern Zambia resolved disputes in accordance with its own customs. Common features of these customary systems included a desire for prompt resolution of differences, informal procedures, a conciliatory approach that emphasized continuing social relationships, and a concern for avoiding lasting enmity and preserving harmony, order, and security within the community. The

---

<sup>4</sup> See Lambert, Tim, "A Short History of Zambia," 2006, <http://www.localhistories.org/zambia.html>; Taylor, Scott D., *Culture and Customs of Zambia*, Greenwood Press, Westport, CT, 2006.

<sup>5</sup> The website of the National Constitutional Conference is at <http://www.ncczambia.org>.

British colonists who arrived in the late 19<sup>th</sup> century brought with them their own laws and procedures. They introduced English common law and established British-style courts and related institutions to administer justice.

Giving effect to English common law for the European population was a substantial challenge for colonial administrators. The authorities were content to allow tribal courts applying customary law to continue to administer justice for the African population. Early Orders in Council authorizing the appointment of judges to apply English law also called for respect for “native laws or customs,” except where found incompatible with the exercise of British sovereignty.<sup>6</sup>

The creation of a structure for the administration of justice in colonial Northern Rhodesia based on English law was thus combined with tolerance for the continued application of customary law. This combination evolved into a dual system that continues to influence the development of the rule of law in Zambia today. As the institutions of colonial governance became more firmly established, Orders in Council broadened the jurisdiction of a High Court, magistrates’ courts, and native commissioner courts and authorized those courts to apply customary law in cases where Africans were among the parties “if not repugnant to justice and morality or inconsistent with any enactment [of British law or colonial ordinance].”<sup>7</sup>

At the same time, the vast majority of litigation involving Africans continued to be dealt with under customary law in the traditional courts that had existed prior to the arrival of the colonists. The subject matters addressed often involved the possession and transfer of land and other property, inheritance, marriage, divorce, and personal status. The traditional courts also dealt with offenses under customary law, deciding on punishment and on duties of restoration and reconciliation.

The colonial administration gave enhanced official status to the so-called “native courts” in 1929 and, at the same time, began to exercise increased control over them. The 1929 Native Courts Ordinance authorized magistrates’ courts to review and revise native court decisions. Regulation of traditional courts was consolidated in the Native Courts Ordinance of 1936, regarded as the predecessor of the post-independence Local Courts Act of 1966. The formalization of the status of these courts was motivated, in part, by the establishment of native courts, beginning in the 1920s and 1930s, in urban areas populated by individuals of diverse ethnicity from various parts of Zambia. Increasing urbanization and mobility necessarily complicated the application of a customary law system that had originated and operated in the context of stable, homogenous village communities.

---

<sup>6</sup> The discussion of Zambian legal history in this section of the report relies heavily on three excellent studies: Mwenda, Winnie Sithole, “Paradigms of Alternative Dispute Resolution and Justice Delivery in Zambia,” Doctoral Thesis, University of South Africa, November 2006, <http://etd.unisa.ac.za/ETD-db/theses/available/etd-09102007-094403/unrestricted/thesis.pdf>; Hoover, Earl L., John C. Piper, and Francis O. Spalding, “One Nation, One Judiciary: The Lower Courts of Zambia,” 2 *Zambia Law Journal*, Nos. 1 and 2, 1970; and Zambia Law Development Commission, “Report to the Minister of Justice on the Restatement of Customary Law Project,” December 2004.

<sup>7</sup> See, e.g., North Eastern Rhodesia Order in Council of 1900; Northern Rhodesia Orders in Council of 1911 and 1924.

The administration of justice was the theme of a series of African conferences that were organized in the 1950s and 1960s as the colonial era was coming to an end. These conferences produced broad agreement on four principal goals:

- A professional magistracy, to provide safeguards against abuses of judicial power;
- Specialized courts, to improve quality and efficiency;
- Separation of powers, to diminish risks of executive influence on judicial decisions; and
- Unification of national legal systems, to encourage equal justice based on a single body of law and a single justice system.

Those goals continue to present challenges for the advancement of the rule of law in Zambia. The issue of unification was addressed in depth in a major study carried out in Zambia in 1970 entitled “One Nation, One Judiciary.”<sup>8</sup> That study pointed out that only Zambia and Malawi had not integrated their dual court systems to overcome the colonial past. While there has been structural unification of the judiciary through the Constitution and the Local Courts Act, the substance of the law applied by the local courts remains separate from the law applied in the Supreme Court, the High Court, and the subordinate courts.

Under post-independence constitutions and legislation, the local courts are an integral part of the justice system under the leadership of the Chief Justice. Local court magistrates, like subordinate court magistrates, are named by the Judicial Service Commission. Appointments of local court magistrates are now based on nominations by provincial local court officers from among residents of the districts where the courts sit. Previously appointed only for three-year terms, these local court magistrates now serve under permanent appointments, subject to good behavior, with retirement at age 55. The increased tenure of local court magistrates is intended to contribute to the professionalization of this corps of judges who still hear the majority of cases in Zambia.

The duality of Zambian law – as applied by the local courts, on the one hand, and by all other Zambian courts, on the other – is gradually being eroded. The subordinate courts apply customary law when hearing appeals from local court decisions. For their part, local courts are obliged not to follow customary law when doing so would be “incompatible with the provisions of any law.”<sup>9</sup> For example, the Zambian law on intestate succession guarantees property rights of widows in the estates of their late husbands, whereas under customary law the estate of a married man normally went to his family (parents, siblings, and their progeny) rather than to the widow. In addition, local courts can be authorized “to administer all or any of the provisions of any written law.”<sup>10</sup> The Zambian Law Development Commission, a statutory body that prepares government-sponsored legislation, is working with the Director of Local Courts to develop a law to harmonize the customary law to be applied by local courts throughout Zambia. This initiative is intended to contribute to more equal treatment in the local courts of similarly situated persons. In some isolated regions, disputes continue to be resolved under customary law by traditional chiefs’ courts outside the statutory framework of the local courts and without regard to written law, even though the resulting decisions have no legal standing.

---

<sup>8</sup> Note 6, *supra*.

<sup>9</sup> Local Courts Act, 1966, section 12(1)(A).

<sup>10</sup> *Ibid*, section 13. This authority has been used only sparingly.

### C. Current Issues and Trends

Weaknesses in the operation of the rule of law and the administration of justice in Zambia are detailed in many reports, a number of which are cited in Annex 3. Principal concerns include the following:

- Zambia is a party to many treaties, including a number of human rights treaties. However, rights enshrined in these treaties are not given domestic legal effect in the absence of implementing legislation. The absence of such legislation in many cases has created a gap between the obligations of the state and the enforceable rights of individuals. An often-cited example is legislation pending since 2005 that would respect gender equality and proscribe gender-based violence in furtherance of the United Nations Convention on the Elimination of All Forms of Discrimination against Women.
- Beyond the example of a gender-based violence law, many legislative proposals to strengthen the rule of law and improve the administration of justice are at various stages of preparation and review. The normal processes appear to move very slowly and uncertainly. Among the major proposals on which action is pending are those dealing with asset forfeiture, money laundering, plea bargaining, trafficking in persons, whistleblower protection, freedom of information, a modern code of evidence, professionalization of subordinate court magistrates, and local court reform. For the most part, these proposed laws have been formulated, but have not yet been transmitted to the National Assembly.
- The Constitution permits the President to designate individuals to serve as “acting” members of the Supreme Court, including sitting Supreme Court judges who reach the mandatory retirement age of 65. The President may also terminate these designations of acting judges. This broad Presidential discretion to grant and withdraw judicial status at the highest level is widely seen to undermine judicial independence.
- The judicial budget is quite small and has been reduced even further in 2009. Inadequate resources impede the recruitment of highly qualified individuals as judges and judicial staff, especially in the subordinate courts where lay magistrates preside in the majority of locations. Low salaries are also believed to increase the vulnerability of judicial personnel to corruption. In addition, there are inadequate resources for training, research facilities, and management systems. The Ministry of Finance has a dominant role in setting the amount and distribution of the judicial budget and also in the amount and timing of disbursements to the judiciary to meet its financial obligations.
- While the inadequacy of financing is an underlying cause of weaknesses throughout the judiciary, this inadequacy is especially disturbing in the case of the local courts. These courts, which hear the vast majority of civil cases in Zambia and apply customary law for their resolution, are presided over by judges who lack legal or management training and often operate without trained staff, suitable facilities, or even basic office supplies.
- Financial shortfalls also affect other institutions in the justice sector, including the police, public prosecutors, legal aid providers, and prison services. For example, in a country with only about 700 practicing lawyers, low government salaries inhibit the professionalization of both prosecution and public defense functions. Most prosecutions (virtually all in the subordinate courts) rely on police prosecutors who are not lawyers, and the Legal Aid Board can provide only minimal representation for a small percentage

of the many indigent defendants in criminal cases. The capacity of the police to investigate crimes, collect and present evidence, and contribute to order and security in communities is limited and popular distrust of the police is widespread. Forensic laboratory facilities and trained laboratory staff are lacking.

- Both civil suits and criminal prosecutions incur unreasonable delays, due to numerous factors. Reasons for delay include rigid and unduly complex procedures, lax case management practices that tolerate excessive adjournments and continuances, lack of automated management information systems to facilitate performance management, the absence of recording equipment to create court records (leaving magistrates to prepare the record with handwritten notes), and judicial vacancies or absences in the subordinate courts.
- Delay in the administration of justice impacts the guarantee of human rights protections, manifested in the long periods (sometimes for years) that indigent defendants who cannot arrange bail must serve in pre-trial detention. By contrast, wealthy defendants are able to take advantage of liberal bail practices, up to and including post-conviction bail during lengthy appellate proceedings. This distinction represents a serious inequality of treatment under the law.
- The high percentage of cases that are appealed and the absence of discretion for the Supreme Court to decline to accept appeals have resulted in overwhelming congestion, delaying unreasonably the finality of judgments, including execution measures to give them practical effect. The burden of a high volume of appeals is often cited as a factor in a perceived decline in the clarity and legal acuity of appellate decisions.

A number of the above-enumerated issues are under active discussion in the current deliberations on a new Constitution, anticipated for adoption before the 2011 elections. These include questions as to the domestic legal effect of treaties to which Zambia is a party and Presidential authority to designate and remove acting judges. In addition, many in the legal community expect the new Constitution to provide for an intermediate court of appeals intended to relieve the burden of appeals on the Supreme Court.

Issues of efficiency and delay are the subject of several initiatives. Small claims courts, authorized by law in 1992 but never established, are about to begin to operate on a pilot basis. This new forum will provide an alternative to either the local courts or the subordinate courts for small claims. The new courts will be presided by commissioners who are lawyers trained as arbitrators, operating under simple procedures. Parties will not be represented by counsel. The High Court is examining whether its successful expedited procedures for commercial cases (the commercial list) could be adapted to expedite the handling of other cases on the court's docket (the general list).

Under Zambia's Fifth National Development Plan, a Governance Secretariat and a Governance Sector Advisory Group, both chaired by the Ministry of Justice (MOJ), have been established and guide a program entitled "Access to Justice." The advisory group brings together representatives from 17 public sector and civil society organizations, including from the legislative and judicial branches of government, in an effort to coordinate work to improve Zambian governance. The development cooperation program of Denmark is supporting this undertaking and broader international support is expected.

A number of initiatives by the Judiciary and by Government agencies are referred to in program documents generated by the Access to Justice Program (see Annex 5). The project promotes a structure of governance intended to promote communication, cooperation, and coordination among the participating organizations. The initial emphasis is on criminal justice, including the challenge of overcoming prison overcrowding and the MOJ's objective to decentralize the operations of the Director of Public Prosecution and the Legal Aid Board so as to increase access to justice outside the major cities. The MOJ hopes to complete a strategic plan in 2009, with the participation of the many stakeholders represented in the governance sector advisory group.

With support from the Access to Justice Program, the Judiciary has developed its own Strategic Plan and Development Program for 2009-2013. This initiative, approved in December 2008, seeks to achieve improved delivery of justice through progress in seven priority result areas:

1. Adequate appropriately qualified and highly motivated human resources at all levels;
2. Improved and conducive physical working environment (infrastructure and equipment);
3. Improved information and communication technology (ICT) facilities and systems;
4. Improved management of court cases;
5. Enhanced ethics and integrity in the Judiciary;
6. Increased public awareness and understanding of judicial procedures; and
7. Fully funded recurrent and development budgets.

Systematic implementation of the new strategic [lan will be a challenge. However, the Judiciary has initiated one project to automate the filing systems in the Supreme Court, High Court, Industrial Relations Court, and selected subordinate courts and to install court recording equipment in selected courts. This modernization effort will be financed by a grant from the Investment Climate Facility for Africa, a Tanzania-based organization supported by several governments and private sector organizations.<sup>11</sup>

The assessment team was encouraged to see the attention being given to overcoming impediments to the effective and efficient administration of justice in Zambia. The current initiatives indicate that major stakeholders are aware of the need for reform. (Stakeholder roles and interests are discussed below.) It should be noted, however, that the attention being given to the various issues of evident importance seems to lack a sense of urgency and is proceeding in a somewhat *ad hoc* manner. Full agreement has not yet been reached on an integrated and coherent plan to assure prioritization and coordinated attention to all the related issues that may have a major influence on the success of particular initiatives. Efforts toward an effective government structure for the Access to Justice Program are proceeding, but progress has been slow in integrating the efforts of participating organizations. For example, the relationship between the MOJ strategic plan now under development and the Judiciary's recently adopted strategic plan remains unclear. Sustained and systematic progress in implementing the measures anticipated in the planning documents will be the decisive factor.

### **III. The Roles and Interests of Major Stakeholders**

The environment for rule of law development in Zambia reflects the attitudes of those who operate and use the justice system and those who are affected by it. Stakeholder attitudes, in

---

<sup>11</sup> See [www.investmentclimatefacility.org](http://www.investmentclimatefacility.org). The Investment Climate Facility for Africa works to remove obstacles to investment and improve the enabling environment for business.

turn, are influenced by a general Zambian conservatism about proposals for dramatic change and a stoic tolerance for human frailty. Among the various stakeholder groups there appears to be a readiness to pursue specific measures, such as modifying procedures to reduce court delay. However, there is little indication that stakeholders are prepared to undertake a coordinated program of action to improve the normative framework and reform the implementing and related support institutions of the justice sector.

The current deterioration of the global economy is an overarching factor that impedes both the emergence of dynamic leadership for justice reform and the development of a broad consensus for coherent action. Many of the issues confronting the Zambian justice sector can be addressed only by an allocation of increased resources. Uncertainty about the implications of economic conditions beyond Zambia's control for the sustainability of recent economic and social progress contributes to reluctance to initiate a significant new program requiring increased government expenditures. To the contrary, anticipated reductions in tax revenues have caused the 2009 budget to reflect a number of reductions in government funding for the administration of justice.<sup>12</sup>

Additional factors that influence stakeholder attitudes are the anticipated adoption of a new Constitution and the imminence of Zambian elections for President and the National Assembly, scheduled for 2011.

#### **A. The Government**

During the 45 years since Zambia gained independence, a strong President has always dominated the political landscape. This tradition of concentrated political power is often cited as a potential impediment to the development of the rule of law in a manner that will be resistant to political influence. On the other hand, the recent anticorruption campaign championed by President Mwanawasa, and supported in part by the MCC Threshold Program, has been effective in denying impunity to senior officials prosecuted on corruption charges. This illustrates the Government's capacity to implement a reform agenda that benefits from unambiguous Presidential leadership.

A period of uncertainty appears to have arisen. A number of justice reform issues are currently being addressed in the deliberations on a new Constitution. Also, the sudden death of President Mwanawasa in 2008 has been followed by the close election victory of his designated Vice President Rupiah Banda to an abbreviated term as successor, with another election scheduled for 2011. In this environment, Government officials appear to be uncertain about how to proceed on long-term issues such as broad justice reform. The result is a pragmatic openness to specific proposals that are clearly consistent with established policy, such as the decentralization of prosecutor and public defender offices and staffs. However, there seems to be greater tentativeness about significant structural changes. The above-mentioned inaction on a large number of legislative proposals may be one manifestation of this uncertainty. A clear signal of Presidential commitment will be important to the success of any sweeping approach to justice reform in Zambia.

---

<sup>12</sup> For a poignant account of the human consequences of the declining world demand for copper, from which Zambia derives more than two-thirds of its export earnings, see Brulliard, Karin, "Zambia's Copperbelt Reels from Global Crisis: Downturn in Commodities Trade Leads to Devastating Mine Closures," *Washington Post*, March 23, 2009, page 1.

The legislative branch has gained increased capacity to exercise oversight over the executive, communicate with citizens, and provide a forum for policy deliberations. While the National Assembly is beginning to experiment with bills initiated by members, significant legislation still originates in the executive branch. It is the executive that takes the initiative to transmit major bills to Parliament for review, possible amendment, and approval. With respect to justice system reform, it appears that interest and encouragement by Parliament would be a helpful incentive. In particular, interested members and committees could encourage the executive branch to set priorities and establish a schedule for moving the legislative proposals to improve the normative framework for the rule of law that have accumulated in the internal review process.

## **B. The Judiciary**

The Zambian Judiciary prides itself on its constitutional autonomy and chafes at its dependence on the Ministry of Finance to fund its normal operating expenses. However, there appears to be no unified position within the Judiciary on sector-wide rule of law development. A number of reform-minded individual judges are championing particular initiatives, such as the automation of case management information systems. Others within the Judiciary are interested in simplification of unduly complex court rules. Still others are interested in improving case management so as to expedite proceedings and reduce delays. Of course, there is strong interest within the Judiciary in improving the working conditions for judges and staff and in receiving training and other support for professional development.

These various interests have been incorporated into the Judiciary's recently approved strategic plan and development program. However, implementation of the key actions contemplated will present many challenges. Also, as noted above, there appears to be ambiguity in judicial attitudes about the Access to Justice Program. It is not yet clear that the Judiciary is prepared to exercise leadership for implementing a coherent reform effort involving numerous stakeholders.

## **C. The Legal Profession**

The Law Association of Zambia is the statutory body that represents Zambia's integrated bar. All lawyers admitted to practice in Zambia and students at the University of Zambia Law School are members of the Law Association. The Law Association's objectives specifically include "the development of law as an instrument of social order and justice and as an essential element in the growth of society," consideration of "legislation related to legal aid and other ways of securing representation for persons...unable to secure it," and promotion of "reform of the law [and]...the improvement and reform of the judicial and administrative systems."<sup>13</sup>

The Law Association engages in a number of programs and activities, including public interest litigation to protect the rule of law in the event of perceived government excesses; promotion of *pro bono* service by private attorneys; sponsorship of a legal aid NGO; public advocacy for liberalizing rules governing the practice of paralegals, professional education, and discipline; and engaging the judiciary in Bar-Bench dialogue on improving the administration of justice.

While concerned to preserve its exclusive privileges to represent litigants in court, the bar also demonstrates openness to expanded access to justice for the poor, including – as noted above – through increased scope for paralegals. It also sees itself as a watchdog against undue

---

<sup>13</sup> Law Association of Zambia Act, Article 4. See the Law Association of Zambia website: [www.laz.org.zm](http://www.laz.org.zm).

political influence in the operation of the courts. It appears that the bar, while not prepared to take the lead, certainly has an important and constructive role to play in any efforts to strengthen the rule of law in Zambia.

#### **D. Civil Society**

Principal organized groups in civil society concerned with the rule of law are the business community and the legal-oriented NGOs. The private sector is aware of weaknesses in the justice sector and is involved in efforts to overcome them. For example, the Chief Executive Officer of the Zambia Association of Chambers of Commerce and Industry is a member of the Government's governance sector advisory group. Of course, most businesses seek to avoid litigation. They are reluctant to use the courts as plaintiffs to try to enforce contracts or collect debts and they tend to prefer settlement to incurring the time demands, costs, and uncertainties of protracted litigation.

The most important needs for judicial resolution of commercial disputes have been largely met by the creation in 1999 of a "commercial list," an expedited and simplified system in the High Court for rapid adjudication, which has considerably reduced the backlog and improved the clearance rate. In addition, contracts governing major business transactions and relationships increasingly commit the parties to submit disputes to arbitration. This trend has been encouraged by Zambia's adoption of a modern arbitration law based on the UNCITRAL model legislation.

While concerned about dispute resolution, the private sector gives much higher priority for reform to burdensome licensing and other administrative procedures involved in opening, operating, and closing a business. Members of the business community see the government agencies and officials that manage these processes as having broad discretion, no transparent standards, little accountability, and susceptibility to political influence and bribery. Efforts to strengthen the justice sector would find considerable private sector support, especially if it promised more accountable implementation of economic regulations. However, it seems unlikely that the business community would be in the forefront of justice system reform.

Zambian NGOs concerned with the provision of legal services are lively, productive, and assertive. They are connected both nationally and internationally on concerns of human rights abuses, gender-based violence and other forms of discrimination against women, prisoner abuse and excessive pre-trial detention, and increasing access to justice for the poor. They form a necessary part of the provision of legal services throughout the country. The Legal Resources Foundation and the International Justice Mission provide direct legal representation. The former works primarily on habeas corpus challenges by prisoners and police brutality civil cases. The latter focuses its direct advocacy on property rights of divorced and widowed women and child rape prosecutions.

The Zambian Institute of Advanced Legal Education (ZIALE) provides mandatory training for law school graduates seeking admission to the bar. ZIALE is preparing to launch a legal clinic staffed by students. In addition, the Law Association of Zambia operates a legal clinic in Lusaka, the National Legal Aid Clinic for Women. In all, the NGO sector has about as many lawyers as the Government to provide legal services. The NGO lawyers are invariably better paid, stay longer in their positions, and have greater access to training opportunities than their government counterparts. Still, the NGOs reach only a small number of those in need and the demand for competent representation of the poor is very largely unmet. The vast majority of the poor lack representation in civil and criminal cases.

In addition to the provision of direct legal services, the NGO community plays an important role in advocacy for access to justice and justice reform. The leading NGOs in this area are Women in Law in Southern Africa, the Legal Resources Foundation, International Justice Mission, Transparency International Zambia, the Young Women's Christian Association (YWCA), the Law Association of Zambia, the Zambia Civic Education Association, the University of Zambia School of Law, the Episcopal Conference of Zambia, the Christian Council of Zambia, and the Evangelical Fellowship of Zambia. Each of these groups has its own focus, but all have joined to advocate for change in the law regarding gender-based violence, police brutality, torture, and pre-trial detention. An expanding network of these NGOs is collaborating in a Paralegal Advisory Network (PAN), a broad-based effort to train and equip paralegals throughout the country to provide advice and support to indigent litigants and defendants.

These efforts take place in a climate of distrust between the justice-focused NGOs and the Government. Some NGOs view all branches of government as complicit in assuring that government benefits those in power. NGOs have joined together to produce "shadow" reports and to draft legislation in order to spur government action. Some in government view the NGOs as subverting legitimate government procedure. They believe the NGOs provide an attractive diversion for international donors who could instead fund lasting improvements in the justice system through the Government. Some on both sides of this divide reject calls for cooperation.

## **IV. The Justice System**

Zambia's justice system involves a normative framework that draws upon distinct traditions of African customary law and English common law, together with a system of courts and related institutions that apply that normative framework. A distinguishing feature of the system is that it is quite small and has few resources. The current budget for the justice system is summarized below in Table IV-1. Available data about staffing and workload are included in the following discussion of the various institutions that make up the system.

### **A. The Normative Framework**

Zambian law is derived from the principles of both English common law and African customary law. These two sources are generally known as the general law and the customary law. The general law incorporates the received English common law and principles of equity, as well as selected British statutes. These supplement the Laws of Zambia and Zambian case law. Zambian lawyers are trained in the general law and it is the general law that is applied in the courts of record. The sources of the general law in order of priority are the Constitution, Zambian legislation, Zambian judicial decisions, English common law and equity, international and regional conventions, and customs.

**TABLE IV-1  
NATIONAL BUDGET FOR PRINCIPAL JUSTICE SECTOR AGENCIES, 2009 (US\$ EQUIVALENT)**

Function	Personal Emoluments	Administration	Capital Investment	Other*	Total
Judiciary Headquarters	3,551,747	511,538	54,545	3,601,062	7,718,892
Supreme Court	194,220	499,194	16,364	143,477	853,255
High Court	647,353	642,207	18,362	2,490	1,310,412
Subordinate Courts	2,535,161	673,212	296,007	784,677	4,289,057
Local Courts	6,989,452	594,589	225,818	532,533	8,342,392
Public Prosecution	578,112	363,636		347,284	1,289,032
Legal Aid Board	78,996				78,996
Ministry of Justice	1,795,186	2,194,294			53,502,131
Police, Law Enforcement	43,457,060	1,535,051		36,160,841	81,152,952
Commission for Investigations					714,906
Prisons	144,464	200,018			344,482
Anticorruption Commission					5,098,244
Sheriff	101,179	45,818		18,200	165,197
<b>Totals</b>					164,216,448

Source: Ministry of Finance, *Estimate of Revenue and Expenditures 2009*. Emoluments for Cabinet Ministers and for Supreme Court and High Court judges are included in a separate budget (not in the budget for their respective institutions). Courts retain and use income from fees to meet some of their expenses. Not all capital expenditures for the courts are included in the judicial budget, and that information is not available for all categories. Therefore, the foregoing table can give only an approximation of the resources allocated to the various justice sector organizations.

The Constitution (Chapter One of the Laws of Zambia) is the fundamental law of the land. The present Constitution was adopted in 1991 to restore a multi-party political system. It was amended in 1996 to modify provisions on citizenship requirements for the office of President and certain matters relating to the powers of government. The Constitution expresses the core values of the Zambian people (Preamble); it guarantees the protection of civil and political rights (Part III); it specifies the powers of the Executive (Part IV), the Legislative (Part V) and the Judicial (Part VI) branches of government. The Constitution may be amended by Parliament, with the exception that changes to Part III must be taken to a referendum. A National Constitutional Conference is currently engaged in an intensive examination of constitutional issues, with a view to proposing a new Constitution before the next general election scheduled for 2011.

The Acts of Parliament are codified in 475 Chapters of 26 Volumes of the Laws of Zambia, most recently revised in 1995. The current edition of the Laws of Zambia includes all Acts in force as of 31 March 1997 when this edition came into effect, all enacted Acts but not yet operational at the time, and such British Acts, Orders, and Orders in Council as deemed appropriate. (The British Acts Extension Act allows for the continued application of certain British enactments to Zambia.) The Attorney General is empowered to periodically publish supplements to the Laws of Zambia. New Acts or amendments to existing Laws are published in the Government Gazette as soon as they are enacted and signed by the President. In addition, the Parliament maintains a website where it publishes the laws, including amendments. Parliament has delegated to Ministers and municipal authorities the power to enact subsidiary legislation known as statutory instruments and by-laws. This subsidiary legislation may not contradict Acts of Parliament, which in turn may not contradict the Constitution.

Civil procedures are contained in the Rules appended to the Act of Parliament creating each Court and the English Supreme Court Rules or White Book (1999). Criminal law and procedure are mainly found in the Penal Code and the Criminal Procedure Code. Alternative dispute resolution is possible through court-annexed arbitration and also under a modern arbitration act based on the UNCITRAL model statute.

Local case law is the second most important source of law because of the common law doctrine of judicial precedent. The doctrine of *stare decisis* applies to judicial decisions and judgments of the higher courts bind the lower courts. Important judgments are reported in the Zambia Law Reports, published by the Council of Law Reporting. English common law and the principles of equity as developed in the English Chancery Court are applicable in Zambia. Decisions from other jurisdictions are of persuasive value only.

International law, both customary and that codified in treaties or conventions, may provide guidance where it does not contradict the general law. Treaties and conventions are only enforceable by the courts when they have been incorporated into Zambian law (domesticated). The customary law system is made of tribe-specific customary laws and practices and is administered in the local courts under the Local Courts Act. The varied customary laws share certain commonalities and generally follow patrilineal, matrilineal, or bilateral descent systems. For instance, the patrilineal system creates a bloodline through the male parent that determines property rights, marriage, divorce, child custody, and inheritance. In general, customary law is unwritten, uncertain, and proven through the use of assessors or the magistrate's innate knowledge of it.

Customary law is recognized by the Constitution, Part XIII of which describes the institution of Chief and sets up the House of Chiefs to deal with matters related to customary law. Further, Article 23 of the Constitution provides an exception to the guarantee of equality of treatment under the law to allow differentiated results under different forms of customary law. Most Zambians use customary law in their personal and family relationships. According to the Local Courts Act, customary law may be followed only insofar as it is not found to be "repugnant to natural justice or morality or incompatible with the provisions of any law."

## **B. The Judicial System**

Under Part VI of the Constitution and the Judicature Administration Act, the Judiciary is an autonomous institution. The Judiciary is headed by the Chief Justice. Article 91 of the Constitution declares that judicial officers shall be independent, impartial, and subject only to the Constitution and the law. Under the Judicial Code of Conduct Act of 1999, the ethical conduct of adjudicators is regulated under the supervision of the Judicial Complaints Authority. Judicial officers are expected to be above family, personal, private, political, and other interests, and above public clamor or criticism.

The court system is administered by a Chief Administrator appointed by the President under the Judicature Administration Act. The Chief Administrator's rank is the equivalent of a permanent secretary in the civil service. Policies concerning human resources in the Judiciary are set by the Judicial Service Commission, which employs the staff, appoints local court and subordinate court magistrates, and proposes candidates to the President for appointment to be High Court judges. The Judicial Service Commission is provided for by Article 123 of the Constitution; its composition, functions, and procedures are established by the Service Commissions Act. It is chaired by the Chief Justice and its members include the Attorney General, Chair of the Public Service Commission, Secretary to the Cabinet, a judge nominated by the Chief Justice, the

Solicitor General, a member of the National Assembly appointed by the Speaker, a representative of the Law Association of Zambia, the Dean of the University of Zambia Law School, and a member appointed by the President.

Prior to 1994, the MOJ, at that time the Ministry of Legal Affairs, was responsible for the court administration functions now performed by the Chief Administrator. Also, prior to 2007, many of the functions of the Judicial Service Commission to employ and oversee judicial staff were carried out by the Public Service Commission. The present structure represents a major improvement in the administrative autonomy of the judiciary.

Local court and subordinate court magistrates are appointed by the Judicial Service Commission to permanent positions and must retire at the age of 55, after which they may be re-appointed on contract by the Commission. A proposal to raise the retirement age of magistrates to 65 is under consideration. High Court judges are appointed by the President on the recommendation of the Judicial Service Commission, subject to the ratification of the National Assembly. They enjoy security of tenure up to the retirement age of 65 after which they may be re-appointed by the President on contract. Supreme Court judges are appointed by the President subject to National Assembly ratification. Once appointed, a judge of the High Court or the Supreme Court cannot be removed from office until retirement at age 65, nor can his or her office be abolished. The removal process must comply with constitutional procedure effectuated by a tribunal.

Financing for the Judiciary comes from funds appropriated by Parliament, as well as court fees. The Judiciary retains 100 percent of its fees, with 40 percent retained in the districts where they are collected (stations) and 60 percent remitted to headquarters. Monies raised from court fines may not be retained and are remitted to the Central Treasury. Salaries of Supreme Court and High Court judges are drawn directly from the Treasury in accordance with the Constitutional Emoluments Act whereas emoluments of subordinate and local court magistrates and judicial staff are met through Judiciary appropriations. The Judiciary makes its own budget within the confines of a ceiling set by the Minister of Finance. Although the Government retains ultimate responsibility for infrastructure development, the Judiciary budget includes some infrastructure development and donors may directly support additional capital projects and programs. The accounts are subject to audit by the Auditor-General and the Judiciary must submit an annual report to Parliament.

The court structure may be likened to a pyramid with the higher levels of courts exercising supervisory powers over the lower levels. At the bottom of the pyramid lie 470 local courts, staffed by local court magistrates and applying customary law. Decisions of the local courts may be appealed to the subordinate courts, which hear those appeals *de novo*. There are subordinate courts in 54 districts throughout the country. Most of the subordinate court magistrates are not members of the bar (lay magistrates). Increasingly, professional magistrates (lawyers) are found presiding over the subordinate courts located in major cities. Appeals from the subordinate courts lie to the High Court, which conducts proceedings in all the provincial capitals. Of equal rank to the High Court is the Industrial Relations Court, a specialized tribunal that hears labor disputes. At the top of the hierarchy is the Supreme Court, which hears appeals from the High Court and the Industrial Relations Court. Although based in Lusaka, the Supreme Court regularly sits also in Ndola and Kabwe. The numbers and allocation of judicial personnel are summarized below in Table IV-2.

**TABLE IV-2  
COURT PERSONNEL, 2009**

Court Level & (Number of Courts)	Number of Judges Authorized	Number of Judicial Vacancies
Supreme Court (1)	9	1
High Court (1 in 11 sites)	30	
Industrial Relations Court (1)	5	0
Subordinate Courts (54)	251	101
Local Courts (470)	1,300	
<b>Totals</b>		

Sources: Supreme Court Registrar, Program Document for Access to Justice Program, Interviews.

There are a number of specialized adjudicative institutions with limited jurisdiction that fit into this hierarchy at various levels or stand alone: The Lands Tribunal is equivalent to the High Court. The Small Claims Court, still at the pilot stage, is the equivalent of the subordinate court and appeals therefrom on points of law only will lie to the High Court. Standing alone are the Municipal Courts, the Revenue Appeals Tribunal, and the Town and Country Tribunal.

Customary law matters must be commenced in the local courts. The local courts administer customary law in any matter insofar as such law is not repugnant to natural justice or morality or incompatible with the provisions of any written law. They may adjudicate customary law offenses equivalent to statutory offenses and municipal offenses to the same extent. Also, the Local Courts Act permits local courts to try criminal and municipal cases when so authorized by the magistrate in charge. Local courts are not formally courts of record, although some of them create summary records of their proceedings.

The subordinate courts are first instance courts of record, following relatively simple procedures. They handle both civil and criminal cases within their territorial jurisdiction. The Subordinate Courts Act limits the size of civil claims, the types of offenses, and the penalties that these courts can impose. In addition, different classes of magistrate handle matters within certain statutory bands. Matters within the subordinate court's jurisdiction must be commenced there rather than in the High Court.

The High Court has original and appellate jurisdiction in both civil and criminal matters. Constitutional matters, civil marriage divorce, and capital offenses such as murder and treason all commence in the High Court, which has very rigid procedures. The High Court has a commercial division with special judge-driven procedures to speed up litigation. The Industrial Relations Court has less rigid procedures and focuses on delivering substantive justice in labor matters. The Supreme Court has appellate jurisdiction over both civil and criminal appeals from the High Court and the Industrial Relations Court as well as appeals from the Lands Tribunal. It has original jurisdiction only in the matter of a presidential election petition. There is no restriction on the right of appeal through the court hierarchy from the local court to the Supreme Court. However, the costs of litigation rise substantially as a case proceeds up the appellate ladder.

*Pro se* appearances by litigants in the higher courts are extremely difficult because of the rigid adherence to procedure as a prerequisite to the hearing of substantive issues. The appellate court does not hear the matter *de novo* or call witnesses, and rarely reviews the lower court's findings of fact. Rather the appeal focuses on determining matters of law as presented in the court record. Enforcement of judgments is the responsibility of the Sheriff, who is appointed by the Judicial Service Commission, and bailiffs also appointed by the Commission.

The volume of litigation and the workload of the courts are not fully discernable from the available data. The Registrar's Office was able to provide information on the number of cases filed and the number of cases disposed of by the Supreme Court, High Court, Industrial Relations Court, and Subordinate Courts. However, data were not available on the backlog of cases that will determine to a great extent when the courts will be able to take up the newly filed cases.<sup>14</sup> No specific information was available about the volume of work of the local courts. However, one knowledgeable source estimates that the local courts dispose of 90 percent of the adjudications in Zambia. The available data on cases filed and disposed of in 2008 are set out in Table IV-3 below.

**TABLE IV-3  
CASE FILINGS AND DISPOSTIONS, 2008**

Court	Cases Filed	Cases Closed	Disposition Rate
Supreme Court	584	282	48 Percent
High Court (General List)	5,618	2,014	36 Percent
High Court (Commercial List)	585	360	62 Percent
Industrial Relations Court	284	214	75 Percent
Subordinate Courts	24,693	17,830	72 Percent
Local Courts			
<b>Totals (exclusive of local courts)</b>	<b>31,764</b>	<b>20,700</b>	<b>65 Percent</b>

Sources: Supreme Court Registrar, Program Document for Access to Justice Program, Interviews.

### **C. Legal Agencies of the Government**

Despite the Judiciary's autonomy, the MOJ continues to play a role in the affairs of the Judiciary through the functions of its various constitutional offices and departments. The MOJ's Permanent Secretary chairs the Governance Secretariat and Governance Sector Advisory Group, described above, made up of key players in the public, private and international community concerned with access to justice. Also, the Attorney General, Solicitor General, and Director of Public Prosecutions are all members of the Judicial Service Commission, which is responsible for appointments of judicial officers and staff.

The MOJ is responsible for law revision. It receives proposed draft amendments or new legislation from concerned ministries and from the Zambia Law Development Commission (an entity affiliated with the MOJ), reviews the legislation, passes it through Cabinet, and presents it to Parliament. Within the MOJ, the Attorney General, with the assistance of the Solicitor General, advises the Government, reviews all Government contracts, and represents the Government before the courts.

The Director of Public Prosecutions (DPP) is a constitutional officer, appointed by the President subject to National Assembly ratification. The DPP is responsible for initiating, continuing, or discontinuing all prosecutions and may delegate prosecutorial functions to the police other public institutions or private individuals. Existing delegations to public institutions include those to:

- The Task Force on Corruption, set up by Presidential order to investigate and prosecute high profile corruption cases from the Chiluba era.

<sup>14</sup> The website of the Zambian Judiciary includes a page, under construction, on court statistics. At present, it contains only partial information on the subordinate courts for 2005-2007 and lists that at the end of 2007, 8,553 criminal and 4,504 civil cases were pending in the subordinate courts. The reporting included all but one of the nine provinces. <http://www.judiciary.gov.zm/pages/about-judiciary/court-statistics/supreme-court.php>.

- The Anti-Corruption Commission, set up under the Anti-Corruption Commission Act
- Drug Enforcement Commission, set up under the Narcotic Drugs and Psychotropic Substances Act
- The Zambia Police Service, which investigates and prosecutes cases (with lay prosecutors) in the subordinate courts.

Personnel shortages limit the presence of DPP professional prosecutors to five of the 11 High Court criminal session centers. Less than 50 professional prosecutors are authorized and several positions are normally vacant. As a practical matter, almost all prosecutions in the subordinate courts are undertaken by the police, while the professional prosecutors deal with the most serious cases heard in the High Court.

Under Article 104 of the Constitution, the Zambia Police Service must protect life and property, preserve law and order, and detect and prevent crime. It has a complement of about 15,000 officers, headed by an Inspector General. The Police Service created a Victim Support Unit in 1999 to respond to the problem of violence directed against women, children, and the elderly. The Unit has offices in most of the 350 police stations throughout Zambia and deals with a large number of cases each year (more than 8,000 in 2006, the last year for which specific information is available). The Police Complaints Authority receives complaints about the performance of police officers. The Police Service also prosecutes criminal cases in the subordinate courts.

The Zambia Prison Service is under the Ministry of Home Affairs. It houses prisoners on remand pending trial and those who are serving their sentences after conviction. There are currently 53 prisons managed by the Prison Service, holding a total of about 14,000 inmates, about 60 percent of whom are convicted and the remainder on remand. Prisons are generally overcrowded and prison populations are not sufficiently monitored to ensure timely disposal of the cases of those on remand or the timely release of those who have completed their sentences. The Ministry of Community Development and Services manages two facilities for juvenile offenders.

The assessment team noted there are a number of Government commissions with responsibilities pertaining to the justice system, with considerable overlap in their mandates. The Commission for Investigations, established under a constitutional mandate, investigates complaints of maladministration and abuse of office or authority by public officers. The Human Rights Commission monitors and reports on human rights violations particularly in institutions such as the police and prisons. The Anticorruption Commission (ACC) is a statutory body responsible for advice, investigation, and prosecution concerning public corruption. The ACC's work is augmented by a Presidential Task Force on Corruption, established to pursue high-level cases of corruption from the Chiluba Administration. In addition, the Drug Enforcement Commission investigates and prosecutes drug offenses. There is also a statutory committee known as the Judicial Complaints Authority whose members are appointed by the President, which responds to public complaints about the performance of judicial officers and refers them to appropriate authorities (including the Judicial Service Commission) for action. The constitutionally-mandated Auditor General audits all public offices and departments and submits an annual report to the President and the Parliament.<sup>15</sup>

---

<sup>15</sup> Transparency International Zambia has published an analysis of the management of public funds based on the Auditor General's reports. See Djokotoe, Edem, and Pamela Chama, *Show Me the Money*, Transparency International Zambia, 2007.

## **D. The Legal Profession**

The legal profession is regulated by the Legal Practitioner's Act and the Law Association of Zambia Act. In order to qualify as a legal practitioner a person must obtain a law degree from the University of Zambia or its equivalent. He or she must then undertake a study program at the Zambia Institute of Advanced Legal Education (ZIALE) and pass the Bar Examination. After admission to the Bar he or she must obtain a practicing certificate issued annually by the Law Association of Zambia upon fulfillment of certain conditions such as proper client accounts. Only such qualified practitioners may appear before the courts. Student practitioners may appear in magistrate's chambers. There are currently about 700 lawyers admitted to practice law in Zambia. Many of them are based in the major cities along the line of the railroad. They charge fees in accordance with a statutory band of fees and costs. Many people cannot afford to hire a lawyer. However, only lawyers can navigate the complex procedures in the higher courts. Other services provided and charged for by legal professionals include those of notary public and commissioner for oaths.

## **E. Legal Assistance and Representation of the Poor**

Legal aid is provided by the Legal Aid Board, a semi-autonomous entity administratively attached to the MOJ. Although the law provides for the granting of legal aid in both civil and criminal matters to persons with inadequate means, the lack of staff and other resources means that legal aid is accorded only in a small percentage of cases, including the most serious of criminal offenses. The authorized staff of the Legal Aid Board is less than 100, about equally divided between lawyers and support staff, for the entire country and there are a number of unfilled positions. Therefore, like the DPP, the Board can maintain offices in only five of the 11 High Court criminal session centers.

The press and civil society in Zambia play important roles in equalizing and broadening access to justice. They are viewed as strong mobilizers of public opinion against encroachment on the judiciary by the executive and legislative branches. Several NGOs provide legal education and advice services – Women and Law in Southern Africa, the YWCA, CARITAS Zambia, and the Zambia Civic Education Association. Other NGOs who provide legal representation are the National Legal Aid Clinic for Women, International Justice Mission, members of the Law Association of Zambia, and the Legal Resources Foundation which focuses on prisoners. Legal representation by non-lawyers, such as paralegals, is prevented by the Legal Practitioner's Act which confines the provision of legal services to licensed law practitioners. The Law Association of Zambia has in recent years made it mandatory for practitioners to take up to two *pro bono* cases annually. In addition, the Association is advocating for some liberalization of the law to permit broader scope to paralegals assisting indigent clients.

Defendants in criminal proceedings are by virtue of Article 18 of the Constitution innocent until proven guilty. They have access to bail both before and post trial until all appeals have been exhausted. Very few offenses are non-bailable. A police bond is available after arrest and before appearance in court. Both bond and bail do not require a cash deposit but the requirement for working sureties is problematic for many defendants. The assessment team notes that the issue of post-conviction bail during lengthy appeals has become a public issue.

## V. Essential Elements of the Rule of Law

The USAID Strategic Framework identifies five elements which “must be present for the rule of law to prevail.” These elements – order and security, legitimacy, checks and balances, fairness, and effective application – are interrelated. Neither separately nor together do they determine whether a rule of law program should proceed or the precise content of such a program. Of course, any assessment team’s judgments about the five essential elements are necessarily based on imperfect knowledge. Yet, taking these elements into account can help to ensure that donor programming decisions are grounded in the prevailing conditions for rule of law development in the country concerned. The assessment team’s judgments formed in Zambia lead us to the following conclusions in this report about the presence of the five elements.

### A. Order and Security

Zambia is a peaceful country, with a sense of order throughout the nation. Zambians are proud of having escaped the internal violent conflict that has afflicted many of their neighbors. Indeed, Zambia has been a refuge for many seeking to escape conflicts in Angola, Democratic Republic of the Congo, Mozambique, and most recently Zimbabwe. The public reacts apprehensively to divisive political appeals to tribal or geographic rivalries among Zambians. Zambians tend to resolve their disputes peacefully, including by resort to the courts when less formal family and community mechanisms prove insufficient. There is relatively little common crime and most of it is not of a violent nature. There are, however, areas of potential risk to order and security:

Discrimination against women persists in Zambian society with a long tradition of male dominance. This discrimination is often manifested by violence, including domestic violence. Women are overrepresented in statistics on poverty and HIV/AIDS prevalence. Gender-based violence has received much public attention in recent years. Another manifestation of discrimination is the still common practice of disregarding women’s property rights, including in cases of divorce and the death of the male spouse. The institutional capacity of the justice system for responding to these issues has not been adequately strengthened. A continued gap between rhetoric and action on such fundamental human rights could well detract from Zambia’s tranquility.

Zambia’s large youth population (current median age is less than 17 years) includes large numbers of orphans from the HIV/AIDS pandemic. Young offenders may spend many months in pre-trial confinement and, if convicted, additional time in overcrowded prisons. A growing population of jail-hardened youths eventually could undermine order and security.<sup>16</sup>

A more general potential threat to order and security is the possibility at some point of a repetition of the history of concentrated political power, followed by public reaction to perceived abuses and inadequate performance. (Public reaction against excesses of both President

---

<sup>16</sup> See the Children in Need Network Monitoring Report on the United Nations Convention on the Rights of the Child, December 2007, <http://www.crin.org/docs/UNCRCZambiat.doc>; World Organization against Torture, “Human Rights Violations in Zambia: Part III, Child Rights Situation,” July 2007, [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct\\_zambia2.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf). The latter report cites a 2005 Zambian Human Rights Commission survey estimating that there were 79 convicted juveniles and 230 juveniles on remand in a prison population of 14,427. The report also alleges that the cited survey may not include juveniles in police custody who were not always registered promptly in the juvenile justice system.

Kaunda and President Chiluba included violent demonstrations.) Under the present Constitution, most recently revised in 1996, the executive power largely controls the legislature, and this combination can put pressure on the judiciary, including by control of resources. The imbalances among the branches of government are the subject of lively debate in the ongoing deliberations on a new constitution. In addition, public interest in decentralization and judicial reform reflects, among other things, a desire to offset the concentration of power in the executive. These issues are discussed further below under the heading of checks and balances.

## **B. Legitimacy**

The normative framework of governance in Zambia enjoys broad respect. The received law, based on English common law, and the customary law, based on pre-colonial traditions, are both seen as legitimate. The sentiment most often expressed in interviews was that the basic legal structure is generally adequate. The problems are seen in the refinement and implementation of the law.

Customary law, despite its various conflicts with modern legal principles, enjoys great popularity. The legitimacy of customary law derives not from notions of democratic participation, but from respect for centuries of tradition and compatibility with a broadly shared cultural preference for reconciliation over “winning” a conflict. While there are some indications of bias against customary law, this distinctly African approach to justice is regarded as an important and still vital part of Zambia’s cultural legacy. The institutions that implement the law enjoy less legitimacy. A history of tolerance for corruption has given rise to considerable public skepticism about the motives underlying government decisions. A vigorous anticorruption campaign in recent years has only begun to affect public attitudes and expectations.

Of course, public attitudes about different government institutions vary greatly. Many public institutions fared worse in surveys than the judiciary. Most people believed the courts generally acted with independence.<sup>17</sup> Indeed, an impressive demonstration of judicial independence and integrity is the recent series of convictions and sentencing of eight senior government officials charged with acts of corruption. Nevertheless, it is sobering that more than 35 percent of households surveyed by the World Bank believed that most of the time bribes are paid to pursue legal proceedings.

In the sphere of economic governance, there is considerable frustration with the complex and duplicative requirements for doing business. These requirements are seen as conferring excessive discretion on government officials and establishing minimum guidance for those affected. As a result, government agencies whose approval is required for the conduct of business are often seen as acting arbitrarily, sometimes corruptly, and sometimes influenced by political considerations. One reaction is that many businesses simply operate outside the law. There is substantial unregistered business activity outside the regulatory system.

---

<sup>17</sup> See AFROBAROMETER, Summary of Results: Round 3 AFROBAROMETER Survey in Zambia, 2005, <http://www.afrobarometer.org/Summary%20of%20Results/Round%203/zam-R3SOR-23jan07-final.pdf>; World Bank, Zambia National Governance Baseline Survey Report, 2005, Executive Summary at [http://www.worldbank.org/wbi/governance/zambia/pdf/Zambia\\_Executive\\_Summary.pdf](http://www.worldbank.org/wbi/governance/zambia/pdf/Zambia_Executive_Summary.pdf), workshop slides, <http://www.worldbank.org/wbi/governance/zambia/pdf/GBS%20RPT%20PRESENTN.pdf>.

The police are most often identified as the least trusted public entity. The police are badly paid, poorly trained and equipped, inadequately supervised, and stretched thin over large districts. They are frequently accused of brutality, corruption, and favoritism.

### **C. Checks and Balances**

The Constitution of Zambia prescribes a tripartite structure of government. Part IV vests executive power in the President. Part V vests legislative power in the Parliament, which consists of 160 persons: 150 directly elected members of the National Assembly, up to an additional eight members appointed by the President, the Speaker of the Assembly elected by Assembly members, and the President. Part VI establishes the Judiciary, consisting of the Supreme Court, High Court, Industrial Relations Court, Subordinate Courts, Local Courts, and such other courts as may be established by law. The Constitution declares that the Judiciary shall be autonomous and that judges “shall be independent, impartial, and subject only to this Constitution and the law....”<sup>18</sup>

In practice, this structure tends to facilitate a concentration of power in the executive. Article 43 of the Constitution confers broad immunity on a sitting President from civil or criminal responsibility. Defamation of the President is a criminal offense. The President has considerable influence over the legislative branch. He selects Cabinet Ministers and Deputy Ministers from among members of the National Assembly and may dissolve the Assembly at any time, thus triggering new elections. While legislative power is vested in Parliament, few significant enactments originate in the National Assembly. Normally, legislative proposals are developed in the executive branch and transmitted to the National Assembly for approval. In particular, annual appropriations to carry out the national budget originate in the Ministry of Finance and are not significantly modified in the legislative process. Of the 84 seats held by the President’s party in the 159-member National Assembly, more than 60 are held by cabinet ministers or deputy ministers, thus blurring the separation between legislative and executive powers.

The President’s constitutional authority to extend on a short-term basis the appointments of judges who have reached the mandatory retirement age of 65 enables the President to dilute the Constitution’s scheme of judges serving under permanent tenure. Three members of the nine-member Supreme Court are currently serving under such short-term, renewable Presidential designations.

In addition, salaries of judges on the Supreme Court and the High Court are not included in the budget for the judiciary. Rather, they are provided for in a separate “leadership budget” of the President’s office, along with those of Cabinet Ministers. Thus, while lower court judges are paid by the judiciary, superior court judges are paid by the President.<sup>19</sup> Despite the constitutional grant of autonomy for the judiciary, the judicial budget is determined in practice by the Ministry of Finance. The Ministry receives the recommendations of the Chief Administrator, modifies those recommendations to reflect the executive’s anticipated revenues and spending priorities, and includes amounts in the annual budget prescribing where the judiciary is to allocate funds that may be appropriated. Once an appropriation is enacted, the Ministry determines the

---

<sup>18</sup> Article 91 of the Constitution.

<sup>19</sup> This practice was cited with concern in a 2002 report by the International Commission of Jurists (ICJ), which noted allegations of substantial increases in judicial salaries by President Chiluba as a possible “attempt by the executive to influence the judiciary and undermine its independence.” See “Zambia,” in ICJ, *Attacks on Justice*, <http://icj.org/IMG/pdf/zambia-2.pdf>.

amounts and timing of releases to the judiciary, although this procedure is more an administrative burden than a direct form of political interference.

Another limitation on judicial autonomy concerns the Judicial Service Commission, which is chaired by the Chief Justice and has responsibility for the appointment of subordinate court and local court magistrates and all judicial staff (other than the Chief Administrator). The Commission also makes recommendations for appointments of High Court judges and implements the disciplinary system of the judiciary. The Judicature Administration Act gives the Commission broad regulatory authority to carry out these important functions. However, the Commission's members include members of the President's cabinet and its regulations are subject to approval by the President. In addition, the Service Commissions Act provides that the President may give the Commission "such general directions as the President may consider necessary, and the Commission...shall comply with such direction."

In a similar vein, the Constitution grants to the DPP the discretion to initiate or terminate any prosecution. However, this discretion is tempered by the duty of the Director to seek guidance from the Attorney General (a member of the President's cabinet) on any case involving general considerations of public policy.

Part III of the Constitution provides for the protection of a broad range of fundamental rights and freedoms. However, the specified rights are subject to derogation "in the interests of defense public safety, public order, public morality or public health" or on other grounds. Moreover, the right to freedom of expression does not include a right to information and freedom of information legislation has been pending without enactment for several years. As one commentator, speaking of an earlier time, has suggested:

Broad powers in the hands of a strong judiciary can provide an effective shield against concentration of arbitrarily exercised executive power, and can augment law reform....The Zambian courts retain sufficient breadth and depth of jurisdiction and power to assume an active and creative role, and they have from time to time demonstrated a willingness to do so.<sup>20</sup>

Those sentiments seem relevant today as Zambia's democratic institutions continue to pursue an appropriate balance between checks on authority and effective governance, with respect for the separation of powers and individual rights. The establishment and operation of the Office of the Chief Administrator and the Judicial Service Commission are important advances in the administrative autonomy of the judiciary, However, it appears that practical advances in judicial independence over recent years are not yet fully reflected in the constitutional framework within which the judiciary presently operates.

#### **D. Fairness**

Fairness is a mixed picture in our assessment of the rule of law. On the one hand, there is broad respect for law and the courts command a higher degree of public confidence than most other public institutions.<sup>21</sup> The consensus of objective observers seems to be that "the country's

---

<sup>20</sup> Purdy, Roger, "The Zambian Judicial System: A Review of the Jurisdictional Law," in Ndulo, Muna (editor), *Law in Zambia*, East African Publishing House, Nairobi, 1984, page 79.

<sup>21</sup> See the survey results cited at note 17, *supra*.

judges and lawyers generally strive to remain independent.”<sup>22</sup> On the other hand, weaknesses in the performance of the justice system, combined with the widespread poverty in Zambia and limited resources available for investment in improving access to justice, raise serious issues about the system’s fairness.

The poor who make up the majority of the population cannot afford lawyers or the time and expense of protracted litigation in the backlogged formal courts. Public defenders and *pro bono* lawyers are scarce. By contrast, a defendant who can afford to retain counsel often faces an inadequately trained police prosecutor in the magistrate’s court who is at a major disadvantage against professional defense counsel. For those in rural areas, the magistrate’s courts are often located at great distances from where the parties live. The language of the formal courts is English and interpreters are not always available. Access to legal services from the Government or from civil society groups is quite limited. All this means that for most people the only recourse is to the local courts. The local courts do an impressive job in dispensing justice rapidly and at low cost, applying customary law. Nevertheless, the well-to-do enjoy the luxury of a choice of law and a choice of forum – formal courts applying written law with representation by counsel, or local courts applying customary law without legal representation. The poor do not have that choice as a practical matter.

Unfairness is also evident in the criminal justice system. An often-cited example is the imprisonment of those charged with criminal offenses, who make up almost one-half of the incarcerated population in Zambia. The poor are often held in pretrial detention for months and even years, while those with the means or with ties to the community, such as family members willing to post bond, are set free on bail. A particularly onerous distinction in this regard is that prominent individuals recently convicted on serious corruption charges were set free on bail while appealing their convictions, even though those appeals will take years to complete. The Director of the Task Force on Corruption has publicly urged a change in the policy of liberal bail for those who have been convicted and sentenced.

Procedural fairness is impeded by the absence of a modern code of evidence. This gap creates uncertainty and risks inconsistency in decisions about what evidence is admissible. In criminal cases, this deprives defendants of protections against false or otherwise improper evidence. In commercial cases, it contributes to uncertainty about the application of the rules within which businesses are expected to operate. In addition, lax case management procedures in both criminal and civil cases contribute to unfairness by delaying justice.

Despite recent public attention to the importance of gender equality to economic and social progress and the need to respect women’s rights as a fundamental tenet of a democratic society, historical gender-based discrimination persists in many forms. Legislation to address gender-based violence has been pending for four years and the resolution of competing views that will permit its transmittal to Parliament and enactment remains elusive. While legislation on property rights upon death of a spouse or dissolution of a marriage has been enacted and the Supreme Court has upheld women’s property rights, so-called “property grabs” that victimize widows remain common and women’s rights advocates are able to assist only in a small number of the discrimination cases that arise. Notably, the limited training being provided for local court magistrates now addresses gender issues in an effort to increase respect for women’s rights in the local courts.

---

<sup>22</sup> For example, this was a conclusion of the rather critical report of the International Commission of Jurists cited at note 19, *supra*.

## E. Effective Application of the Law

The above-described concerns that demonstrate inadequate checks and balances and detract from the legitimacy and fairness of Zambia's justice system combine to undermine the effective application of the law. Delays in the legislative and judicial processes and also in the dissemination of new laws and judicial decisions cause uncertainty about what is the law. The limited information available about the performance of the courts reveals low clearance rates and suggests substantial backlogs. Legal representation of the poor and the disadvantaged is clearly inadequate to the need. Legal representation of the Government is also often inadequate, with the limited number of attorneys available to represent the Government being one of the causes of delay in the courts.

On the criminal justice side, effectiveness issues are indicated by popular dissatisfaction with police investigations, lengthy pretrial detention, inadequate access to legal assistance, and overcrowded prisons. On the civil justice side, the costs, time, and uncertainty of legal remedies to collect debts, enforce contracts, or challenge administrative decisions by regulatory authorities inhibit economic activity. (Zambia ranks 100 of 181 countries measured by the World Bank for ease of doing business.<sup>23</sup>) Perceptions of vulnerability to the influence of the executive branch and of corruption in the administration of justice undermine public confidence in the integrity of the entire justice system.

A common measure of a justice system's effectiveness is the extent to which a society complies with its rules.<sup>24</sup> In one sense, the admirable qualities of peace and order that are characteristic of Zambia suggest that the effectiveness of the justice system, despite its weaknesses, is adequate. On the other hand, the system's delays and uncertainties give rise to doubts as to the extent to which it influences behavior. On balance, it seems reasonable to infer that greater timeliness, efficiency, independence, accountability, and accessibility in the justice system would contribute to the system's effectiveness in helping Zambia to meet the economic, social, and governance challenges that the nation confronts.

The most troubling aspect of the assessment with regard to the effective application of the law was the team's perception that Zambians were generally willing to tolerate weak performance by the justice system, including the unequal impact of the system's weaknesses on disadvantaged segments of the population. Some examples of this tolerance include:

- The Access to Justice Project estimates that 90 percent of adjudications take place in the local courts. Yet, it found no "reliable assessment of the caseloads and staffing situation of the Local Courts" and resources are not provided to give these courts even minimal conditions for a dignified working environment or a capacity to provide informed service to their communities.
- It is evident from the low case disposition rates of the subordinate courts, the High Court, and the Supreme Court that there are substantial backlogs in all these courts. Yet, current information about the number of pending cases is not publicly available, impeding consideration of what the problem is and what should be done about it.

---

<sup>23</sup> *Doing Business 2009*, World Bank, <http://www.doingbusiness.org>.

<sup>24</sup> See, e.g., McAdams, Richard, "The Expressive Power of Adjudication," 2005 *Ill. Law Review* 1043, 2005.

- It is generally recognized that gender-based violence is widespread in Zambia. But legislation to respond to this violation of basic human rights does not move forward.

Achieving effective application of the law will require that Zambian civil society and Zambian leaders decide that the *status quo* is unacceptable and that it can be changed. Fortunately, there are indications of movement toward such a decision. These include the interest by some High Court judges in extending expedited procedures to the entire docket of cases, the thoughtful approach to developing a system of small claims courts that hold promise for increasing the professionalism of the judiciary, the determined efforts by the Director of Local Courts to improve the knowledge and status of local court magistrates, and the committed work of a number of NGOs to increase access to justice. The Government's Access to Justice Program, with international support, is seeking to organize these disparate indications of concern about effective application of the law into a coherent framework for informed action and systemic reform.

## **VI. Current Programs of International Cooperation**

Zambia is an aid-dependent country. Official development assistance accounts for about ten percent of Gross National Income and about one-half of the Government's budget.<sup>25</sup> Relatively little of this assistance is directed to the justice sector. Nevertheless, the rule of law has implications for the effectiveness of international cooperation in a number of respects. Some US assistance programs could benefit from an integration of rule of law considerations, and some international cooperation partners are demonstrating increased interest in the rule of law as an important aspect of Zambia's development.

### **A. USAID**

USAID-administered assistance to Zambia totals about \$300 million annually. By far, the largest component of this assistance (more than \$250 million) is in the health sector, primarily through the Global HIV/AIDS Initiative. Other priorities in the USAID program include economic growth and education (each about \$10 million). There is no current USAID program in the field of democracy and governance.

Economic growth is the US Government's top foreign assistance priority for Zambia. The USAID program seeks to address impediments to Zambia's competitiveness in regional and international markets, with an emphasis on agriculture. USAID supports improvements in the policy environment; increased access to markets, finance, and business services; and enhanced production and productivity. The rule of law is relevant to these activities in that uncertainties in the legal and regulatory environment and inadequacies in existing mechanisms for resolving commercial disputes increase costs, diminish competitiveness, and discourage investment.

The USAID education program is focused on helping the Ministry of Education to improve the quality of primary education following a dramatic increase in school enrollment in recent years. Particular activities include support for community schools and distance learning for those not adequately served by government schools. Just as issues of HIV/AIDS prevention and

---

<sup>25</sup> Total overseas development assistance to Zambia in 2007 was more than \$1 billion. *Development Cooperation Report 2009*, Organization for Economic Cooperation and Development, March 2009, Table 25, page 204.

mitigation are being addressed with teachers and in the schools, themes relating to democratic governance and the rule of law could be integrated into USAID's dialogue with the Ministry of Education and other activities if Zambians prioritize these issues.

The USAID health program addresses, in addition to HIV/AIDS, the challenges of malaria, maternal and child health, and family planning. The most immediate relevance of the rule of law to this sector is the continuing tolerance in Zambian law, and even more in implementing institutions, of persistent gender bias. A number of compelling reports have documented the relationship between the most egregious manifestations of this bias – denials of women's legal rights to security of both person and property – and the higher incidence of HIV/AIDS for Zambian women than for men.<sup>26</sup> USAID has recognized this issue through specific activities such as the "A Safer Zambia" (ASAZA) program, conducted in coordination with the US DOJ under the Women's Justice and Empowerment Initiative. (The DOJ activities are described below.) ASAZA works directly with justice-oriented NGOs to address gender-based violence, including by addressing the legal needs of victims. There would appear to be ample scope for increasing protection for women from violence and theft of property within the context of the US Government's objective of reducing the incidence and impact of HIV/AIDS.

Earlier USAID programs have addressed issues of democratic governance. In particular, USAID was instrumental in introducing court-annexed mediation to Zambia as an alternative procedure to expedite the resolution of civil disputes.<sup>27</sup> In addition, USAID programs have contributed to institutional strengthening of the Zambian Parliament and supported research for improving the legal framework for combating corruption and human trafficking.<sup>28</sup>

In 2008, USAID completed the management of an MCC-financed Threshold Program for Zambia. This program included three components intended to prevent corruption in government institutions, improve effectiveness of public services, and improve border management of trade. Obviously, these components served US Government priorities of promoting economic growth through trade and investment and enhancing governance and fighting corruption. Of most direct relevance to the rule of law, the anticorruption component focused on reducing opportunities for administrative corruption in three Zambian agencies (Ministry of Lands, Immigration Department, and Zambia Revenue Authority) and strengthened the capacity of the Anticorruption Commission. This program achieved greater accountability, increased transparency, and enhanced public access to information. As performance in the involved agencies improved, public perceptions of corruption diminished according to surveys and a focus on quality and timeliness of service emerged.<sup>29</sup>

---

<sup>26</sup> See, e.g., Ali, Nada Mustafa, "Hidden in the Mealie Meal: Gender-Based Abuses and Women's HIV Treatment in Zambia," Human Rights Watch, December 2007, <http://www.hrw.org/en/node/10530/section/1>; ARD, Inc, "Land Tenure and Property Rights and HIV/AIDS," USAID, 2009, <http://www.ardinc.com/capabilities/ltpr.php>.

<sup>27</sup> See Chemonics, International, Inc., "Implementation of Court-Annexed Mediation in Zambia," Final Report, October 2000, [http://pdf.usaid.gov/pdf\\_docs/PDABS643.pdf](http://pdf.usaid.gov/pdf_docs/PDABS643.pdf).

<sup>28</sup> See, e.g., Thompson, Jill, "Framework & Draft Legislation to Combat Human Trafficking in Zambia: Development of an Effective National Policy," USAID, May 2007, [http://pdf.usaid.gov/pdf\\_docs/PNADI909.pdf](http://pdf.usaid.gov/pdf_docs/PNADI909.pdf).

<sup>29</sup> See Chemonics International, Inc., "Good Governance through Transparency, Accountability, and Improved Services," Zambia Threshold Project Final Report, August 2008, [http://pdf.usaid.gov/pdf\\_docs/PDACL989.pdf](http://pdf.usaid.gov/pdf_docs/PDACL989.pdf).

Zambia was selected as eligible for an MCC Compact in December 2008, thus terminating its eligibility for an extension of the Threshold Program. However, there is likely to be a gap of up to two years before a Compact can be concluded and enter into force. In the interim, there is a risk that without donor investment to build on the accomplishments of the Threshold Program the results will begin to erode. Accordingly, an anticorruption focus to help sustain the progress achieved would seem especially appropriate for any new USAID program to strengthen the rule of law.

## **B. Other US Government Programs**

**Department of Justice:** Zambia is one of four African countries receiving assistance under the Women's Justice and Empowerment Initiative, which is intended to improve local ability to investigate and prosecute cases of gender-based violence and provide victims with needed support. The support activities are implemented by USAID, and the US DOJ has assigned law enforcement (ICITAP) and prosecution (OPDAT) advisors to work with Zambian authorities on training in the investigation and prosecution functions. The principal Zambian counterpart is the National Police, which has responsibility for investigation and prosecution, the latter through lay police prosecutors who represent the state in the subordinate courts. Given the basic institutional weaknesses of the Zambian police, it is unclear whether this program, focused on one particular type of offense, will have a significant continuing impact after the training in 2010.

**International Visitors and Exchanges:** The Public Diplomacy Program, managed by the US Department of State, has a small budget that can support annually less than ten visits to Zambia from the US or visits to the US from Zambia. In 2008 and in plans for 2009, these visits are clearly aligned with established US Government priorities. Themes have included freedom of information, elections, HIV/AIDS, education, and agribusiness. In addition, Zambia provided the strongest response in Africa to the Public Diplomacy Program's Democracy Video Challenge, a public competition for videos on themes relating to democracy. In the course of the assessment, several senior Zambian judges mentioned the benefits they attributed to past judicial exchanges with the United States. However, the justice system has not been the subject of any recent visits and is not presently included in the visits planned for 2009.

Should a decision be made to give priority to the rule of law in US relations with Zambia, it would seem desirable that any USAID program be coordinated with the Public Diplomacy Program in order to obtain the maximum benefit of outreach efforts. In this regard, there would appear to be a great opportunity to engage the representatives of the US DOJ now resident in Zambia for local public speaking opportunities. This would permit contributions to the policy dialogue by highly qualified and well-informed experts with no associated travel costs.

## **C. Other International Programs**

Several international cooperation partners have had experience with programs in the justice sector. The United Kingdom (through DFID) worked with Zambia to introduce community policing. Germany (through GTZ) funded a project to improve the legal status of women which, among other things, provided training to local court magistrates. More recently, the Investment Climate Facility for Africa, an organization supported by several governments as well as private sector entities, provided a grant for automating the filing system of selected Zambian courts. However, these were isolated initiatives, not integrated into any coherent effort to strengthen the rule of law and improve the administration of justice.

The only current ongoing program in the justice sector that enjoys continuous international support is the Access to Justice Program, supported primarily by Denmark. Access to Justice is based directly on the Zambian Government's Fifth National Development Plan, which contains a chapter on governance with specific identified justice sector strategies and objectives.<sup>30</sup> The Danish Government has assigned a technical advisor to work with the Zambian authorities in developing a program to give effect to the National Development Plan's aspirations in this regard. Over the past three years the Program has worked to establish a multi-sector, multi-branch governance structure for the program and to foster a willingness and capacity for communication, cooperation, and coordination among participating organizations. That preparatory phase is now largely completed. The Program established a steering committee of agency heads (including representatives from the Judiciary and the National Assembly), a technical committee of task managers, planning units in each of the concerned organizations, a secretariat chaired by the MOJ, and a Governance Sector Advisory Group with representation from civil society as well as the public sector.

The immediate focus is on criminal justice, with emphasis on five Zambian institutions: the Police, Director of Public Prosecutions, Legal Aid Board, Judiciary, and Prisons. However, the ambitious goal of Access to Justice over the next three years is to move toward a long-term sector-wide approach to justice reform in Zambia. Moving beyond the organizational dimension, the work plan seeks to address human resources needs in the justice sector, improved justice services to marginalized groups, an improved legislative and policy framework for the administration of justice, increased public awareness of human rights and legal remedies, and improved information management within and across justice agencies and institutions. Baseline data are being collected in a national governance survey, an access to justice assessment, and a training needs assessment for judges, magistrates, and court staff. Additional cooperating partners have examined the program and have expressed interest in joining Denmark in supporting it. In particular, the European Commission, based on a January 2009 assessment, is planning to contribute to Access to Justice in 2010 and Germany (GTZ) is planning to provide technical assistance.

Given the degree of local ownership for Access to Justice, the continuity of international support, and the strategic, sector-wide approach it is seeking to foster, it would seem highly advisable for any USAID rule of law program to be carefully coordinated so as to be mutually reinforcing with Access to Justice. It should also be noted that the Zambian National Assembly's Parliamentary Reform Program, now in its third phase, is receiving support from a number of cooperating partners, including UNDP, DFID, the European Commission, and Irish Aid. (USAID was an active participant in phase II.) Over the past decade, this program has contributed significantly to ongoing efforts to enhance parliamentary oversight of the executive and increase citizen participation through a focus on member-constituency relations, the legislative process, the committee system, administration of the National Assembly, and support services to Parliament and its members.<sup>31</sup>

---

<sup>30</sup> Republic of Zambia, Chapter 31, "Governance," in *Fifth National Development Plan, 2006-2010*, December 2006, pages 276-294," <http://www.imf.org/external/pubs/ft/scr/2007/cr07276.pdf>.

<sup>31</sup> See the Parliament website, [www.parliament.gov.zm](http://www.parliament.gov.zm).

## VII. Future Strategy for USAID

### A. Principal Rule of Law Issues

The gloomy conclusion reached by one major analysis of Zambia's political development is that the central institutions of the legal system are not operating "in a *reliable* way which would ensure that the fundamental individual rights and...security of all citizens are protected, that contract obligations are enforced, and that property rights are secure and transferable" (emphasis added).<sup>32</sup> According to this analysis, the problem is not that the justice institutions are failing to carry out their intended functions. Rather, it is that they cannot be relied upon to carry them out consistently in a satisfactory manner.

This report has examined the costs of many specific weaknesses in the operation of the rule of law and the administration of justice in Zambia that leads the assessment team to support the foregoing conclusion:

- The unreliable performance of the justice system gives rise to uncertainties and increases the cost of doing business, impeding economic growth for the nation and diminishing economic opportunities for Zambians.
- By denying women the legal protections to which they are entitled, the system's weaknesses undermine respect for human rights, squander valuable human capital, and detract from the effectiveness of efforts to reverse the spread of HIV/AIDS.
- By delaying the resolution of disputes and permitting erroneous applications of the law the system in its weak state erodes the effectiveness of democratic governance and attenuates the control of corruption.

The interests of Zambia and the United States thus coincide in wanting to overcome these weaknesses.

In addition to describing weaknesses the assessment team has noted some constructive efforts to strengthen the rule of law and improve the administration of justice. Examples include greater activism by Parliament in shaping a legislative agenda still dominated by the executive, efforts to increase the professionalism of the local courts that provide the principal access to justice for most Zambians, the interest of some judges and others in the legal community in innovative ways to increase efficiency and improve service delivery, and the enthusiasm and dedication by a number of NGOs in extending legal knowledge and assistance to underserved segments of the population.

The Government's Access to Justice Program offers the possibility of movement toward a structure that can bring these various efforts together. While the initial focus has been largely on internal organization, coordination, and fact gathering, recent developments (including increased international interest) suggest there may be a shift to actions that can have a demonstrable impact on strengthening the rule of law and extending its protections to a broader circle of stakeholders.

---

<sup>32</sup> Erdmann, Gero, and Neo Simutanyi, "Transition in Zambia: The Hybridisation of the Third Republic," Konrad Adenauer Stiftung, 2004, [http://www.kas.de/proj/home/pub/34/1/dokument\\_id-4026/index.html](http://www.kas.de/proj/home/pub/34/1/dokument_id-4026/index.html). (This study is a part of a series on democratic transition and consolidation in Africa.)

The overarching question is whether the justice system will be able over time to play an effective and continuing role to strengthen democracy by balancing the authority of the several branches of government and acting as an independent and accountable protector of the security of person and property. If the justice system is to play that role, it will need to address four principal challenges arising from the essential elements of the rule of law. In particular:

- Judicial independence needs to be strengthened so that the Judiciary can be a more effective check on the concentration of power in the Executive.
- The justice system needs to be more accountable so that it can enjoy legitimacy and public confidence in its integrity.
- The justice system needs to demonstrate more equal treatment, increased access for the poor, and greater respect for the rights of women so that it will reflect fairness to all.
- The justice system needs to improve its efficiency and effectiveness so that it will be institutionally capable of addressing the challenges of checks and balances, legitimacy, and fairness and fostering broad societal adherence to the law.

At this time, the rule of law has come to be recognized as an important factor for Zambia's economic, social, and democratic progress. The greatest challenge is that there is not yet a consensus that the widely recognized issues in justice sector performance require urgent and concerted attention. Civil society is not demanding change; implementing institutions are not demonstrating a strong capacity for action; and political leaders are not declaring their commitment to the kind of determined effort that would be required to achieve sustainable progress.

In these circumstances, a USAID direct investment in an isolated effort to improve some aspect of the performance of the courts or related institutions would not seem likely to produce the desired results. For example, the strategic plan developed by the Zambian judiciary for 2009-2013 has an "indicative" budget which is almost 40 billion Kwacha more than the estimated amount expected to become available from the Zambian national budget. This financing gap suggests that priority may be given to activities for which international financing may become available. A program driven by the availability of donor funding is not likely to provide a coherent approach to setting priorities and addressing the most important issues. Moreover, when exceptional financing ends, the impact of the activity it paid for often begins to fade. (A case in point may be the automation of court records, an initiative for which the judiciary recently received financing for the second time.)

## **B. The Potential for USAID Engagement**

In the present environment, a USAID rule of law program would best be directed toward fostering a greater readiness for coherent, Zambian-led, justice-sector reform. The objectives would be:

- To support interest within the judiciary in increasing judicial capacity for efficient self governance, independence, and accountability;
- To encourage promising trends toward improved service delivery; and
- To increase the knowledge of Zambians about their legal rights and obligations and the operation of the justice system.

These three suggested program objectives are mutually reinforcing and intended as an appropriate response to the principal rule of law issues described above in the present circumstances. Citizen knowledge will be essential to informed demand for service; judicial capacity for independent and accountable governance will be essential to a credible response to public demand; and fostering improved service delivery will be needed to convert public demand and judicial capacity into effective action. This approach would engage those within the justice sector, including in civil society, who have already demonstrated their interest in strengthening the rule of law.

The USAID program, while avoiding premature investments in proposed reforms for which Zambian readiness is not yet evident, can help to foster the popular demand, institutional capacity, and political commitment that will be needed. Such a focused approach at this time can lay the basis for a more robust initiative later (perhaps in the context of an MCC Compact), if Zambian leadership embraces a commitment to systemic reform of the justice sector. The objectives of building judicial capacity for independent and accountable governance, improving service delivery, and increasing popular knowledge are entirely consistent with the Access to Justice Program, which demonstrates continuing Government interest and enjoys growing international support. This compatibility offers opportunities for mutually supportive efforts.

Specific themes and activities to be included in a new USAID rule of law program should be selected through a collaborative process with concerned Zambian organizations and in coordination with other international partners. Consultations can help to ensure that program content is compatible with Zambian as well as US priorities, and international coordination should help to ensure consistency of support and avoid conflicts or duplication of effort. From the US side, program content should be integrated into the overall policy objectives of the US Government in its relations with Zambia. Examples might include subjects relating to legal impediments to the competitiveness of business, combating gender-based violence, reducing the spread of HIV/AIDS, and controlling corruption.

### **C. Recommendations**

The recommendations that follow from the assessment team's foregoing analysis are necessarily in the nature of identifying promising areas to be explored in a spirit of partnership rather than expressing confident assertions by the assessment team of what precise measures are most appropriate. The assessment has certainly identified issues. But it has not been able to explore those issues in sufficient depth to know what specific steps are most likely to produce desired results. In this spirit, the assessment team respectfully offers for consideration by USAID the following:

#### **1. A USAID rule of law program should concentrate on fostering Zambian readiness for coherent, Zambian-led justice reform.**

The challenges to the rule of law in Zambia are strategic and interrelated. Rather than select one or more needs for temporary individual attention, USAID should work with Zambian and international partners to encourage a strategic Zambian response designed to produce sustainable reform.

#### **2. The USAID program should focus on three compelling aspects of a coherent Zambian reform effort where current trends demonstrate the emergence of priorities and good prospects for increasing the momentum of locally owned initiatives. In particular, USAID should focus on:**

- **Increased capacity of the judiciary for independent and accountable self governance;**
- **Improved service delivery by justice system operators; and**
- **Enhanced knowledge by Zambians about their legal rights and obligations and the operation of the justice system.**

**Increased capacity of the judiciary for independent and accountable self-governance**

should have appeal within the judiciary itself. Improved governance would be very helpful in advancing the judiciary’s desire to gain increased respect for its constitutional autonomy. Exposure to good practices in basic management functions performed by administrative offices of courts and dialogue with experts on court management could help to determine priorities and inform decisions. Examples of evident needs that might be explored in consultations include:

- Basic statistics on workloads and productivity that would inform the allocation of resources to where they are most needed.
- Performance standards that would provide guidance to judges and an objective basis for performance evaluation and related incentives for disciplined case management.
- Transparent financial management that facilitates planning, accounts for all available resources, allocates those resources to identified priorities, and provides quantitative justification for adequate budgets and fiscal autonomy for the judiciary.
- Property and technology management to facilitate inventory control, assure timely maintenance, provide adequate support for information and communications systems and networks, and permit efficient distribution of expendable supplies.
- Recruitment, selection, training, career development, and discipline of judicial officers and support staff so that valuable human resources are productively used, careers are professionally rewarding, and the public receives excellent service.

The objective should be not to develop external solutions to these issues of institutional capacity, but to engage Zambian stakeholders – with modest technical assistance and exposure to successful experience elsewhere – in formulating priorities, strategies, and results-oriented implementing plans realistically aligned with available resources. While these issues are not given great prominence within the Judiciary’s Strategic Plan and Development Program, that program offers a strategic framework that could readily accommodate them. The Access to Justice Program contemplates attention to these issues as well.

**Cooperation to foster improved service delivery** can help reformers to achieve practical results that advance the beneficial role of the justice system as a public service. This aspect of a USAID program can respond to Zambian initiatives at several levels. Examples might include support for those within the judiciary who are interested in the following reform initiatives:

- Simplification of formalistic and complex procedures that impede the progress of individual cases in the courts, mystify the public, and cumulatively increase the time and expense of litigation and contribute to the congestion of court dockets.

- Drawing on High Court experience with the commercial list to expedite case management in the High Court's entire docket, possibly including as well applying the lessons learned to streamline case management in the subordinate courts.
- Launching the small claims court in ways that can provide a model for improving the performance of other courts and serve as an entry point for attracting qualified candidates into judicial service.
- Harmonization and codification of customary law and increasing the professionalism in the local courts.

As in the case of judicial governance, the USAID program should be geared to increasing knowledge, enhancing expertise, and motivating and generally facilitating locally-owned progress rather than trying to substitute US knowledge and resources for a local initiative.

**Enhanced public knowledge of the law and the justice system** would appear to be the area with the broadest scope for support of ongoing activities. The existing Paralegal Advisory Network (PAN) organized by a group of NGOs has been expanding its participation and is receiving international support through the Access to Justice Program. The Law Association of Zambia has been cooperating in this initiative, while also exploring a liberalization of existing legislation to increase the scope of permissible activities of paralegals on behalf of the poor. USAID may well find a broader readiness for reform on the part of these active civil society groups than generally in the public sector. This environment of civil society activism might permit a number of innovative activities in furtherance of a sustainable approach to legal assistance for the disadvantaged. Examples might include support for the following:

- Developing and sharing among PAN member organizations materials for training paralegals.
- Establishing professional standards and safeguards for paralegals to help the PAN assure quality service to the public.
- Developing and sharing educational materials to increase public awareness and understanding on specific themes of legal empowerment.
- Outreach by NGO training efforts to include the staffs of local courts and subordinate courts so that these officials will be better prepared to respond to the public.
- Inclusion of economic issues in public education efforts, such as how small businesses can satisfy legal requirements and contest arbitrary actions by administrative officials. (This could provide an opportunity for engaging the private sector in the public education activities.)
- Measures to help ensure that gender sensitivity and safeguards against corruption are fully integrated in public information programs.

The work of the Commission on Legal Empowerment of the Poor, with its emphasis on access to justice, property rights, labor rights, and business rights, documents the potential for inclusive legal empowerment to serve as a cornerstone of participatory democracy. Independent research confirms the relevance and practicality of public awareness and civic education in

Zambia.<sup>33</sup> Particular themes and approaches will need to reflect local knowledge and interests. However, the body of existing research may be useful to help inform the choices to be made. All of the foregoing examples are merely illustrative of how a USAID rule of law program might be designed to encourage Zambian justice reform in a manner consistent with local initiatives, existing international support, and US Government priorities. Thorough and searching consultation with local stakeholders will be essential to see how these ideas might best be adapted to foster sustainable results.

#### **D. Conclusion**

In conclusion, the assessment team is convinced that the rule of law will have a major impact on Zambia's development. As in other aspects of development, the ultimate responsibility rests with Zambian institutions and the Zambian people. Nevertheless, it is clear that the normative framework and the institutions of the justice system need to be strengthened and that international cooperation at this time can contribute to Zambia's progress toward strengthening them and thereby help Zambia advance toward its economic, social, and democratic goals.

USAID has considerable experience and capacity that can enrich the international contribution while advancing US Government priorities in relations with Zambia. This assessment is offered in the hope that it can be of value in helping to identify a practical and constructive role for USAID in international cooperation to support democratic development in Zambia based on the rule of law.

---

<sup>33</sup> See *Making the Law Work for Everyone*, Report of the Commission on Legal Empowerment of the Poor, and the related volume of the Commission's working group reports, 2008, <http://www.undp.org/legalempowerment/report>. See also Riutta, Satu, *Empowering the Poor? Civic Education and Local Level Participation in Rural Tanzania and Zambia*, PhD thesis, Georgia State University, 2007, [http://www.ansa-africa.net/uploads/documents/publications/Riutta\\_Satu\\_200705\\_PHD.pdf](http://www.ansa-africa.net/uploads/documents/publications/Riutta_Satu_200705_PHD.pdf).