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The Challenges of Accessing Justice in Zambia

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Abstract

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*The challenges of accessing justice in Za*

# ‘There is need for reform, of the whole justice sector’

It is no secret that the justice system in Zambia suffers from numerous challenges that hinder people from accessing justice, writes **O’Brien Kaaba**

**A**ccess to justice relates to the physical availability, accessibility or proximity of the appropriate justice institutions; and to the conceptual, that is, the quality of services received from justice institutions. Most of the problems that assail the justice sector are well known. They include corruption, inadequate personnel, poor funding, interference by the executive, high cost of legal services, and lack of tools and equipment to carry out entrusted mandates.

This article discusses four aspects of the justice sector that militate against access to justice -- the inadequate and uneven distribution of lawyers; high cost of legal services; inadequate legal aid; and integrity of the judiciary.

## Inadequate and uneven distribution of Lawyers

When people have a legal claim or problem to resolve, they look towards lawyers to help them wade through the legal maze in order to vindicate their claim(s). Lawyers, by virtue of their training, have skills to help resolve legal disputes and assist their clients claim their

rights, and are therefore indispensable in the process of accessing justice.

Zambia suffers from low and uneven distribution of numbers of lawyers across the country. Fewer than 1000 lawyers are licensed by the Law Association of Zambia (LAZ) annually who are entitled to practice law. In a 2010 study, Kahn-Fogel reported that LAZ had in that year licensed 731 lawyers to practice law. He estimated that that translated to about one lawyer for every 17,695 Zambians.

In 2012, a study by the Bureau of Institutional Reform and Democracy (BIRD) reported that LAZ in that year had registered 972 lawyers. However, only 545 were available to take up private cases as the rest were in fulltime employment as in-house lawyers for various companies and institutions.

The low numbers are compounded by uneven distribution of lawyers across the country. In 2012, the BIRD indicated that the registered lawyers were distributed across the country as follow:

Province: Number of Lawyers:

• Muchinga	0
• Northern	0
• Luapula	1

• Western	1
• North Western	1
• Eastern	4
• Central	6
• Southern	12
• Copperbelt	89
• Lusaka	431

means, still charge sultation fee and legal aid contribu case is taken up b gent litigants who from LAB still hav filing fees from th

Most services : not free of charge. Local Courts, the judiciary, which i lent and accessible charges the follo fees for services:

- Issue of su dant: K5
- Issue of s ness: K5
- Lodging A nate Cour
- Notice of appeal: K
- Hearing F
- Divorce C
- Preparatio K50; and
- Appointm trator of e

Equally, service private practice . The following is current hourly ra a lawyer, accordi experience:

As can be seen, some provinces do not have a single lawyer to take up cases for people. Even in provinces with lawyers, their law offices tend to be located in big cities and towns. Small towns and villages, therefore, have no lawyer within easy reach. Without lawyers to consult, it is difficult for many people to access justice and vindicate their rights.

## High Cost of Legal Services

There are several costs associated with accessing justice. These include paying for the services of a lawyer, court fees and fees for other justice institutions. Some cases involve travelling over long distances. In such situations, the concerned persons have to incur transport and accommodation expenses.

The Legal Aid Board (LAB), the government institution responsible for providing legal aid to indigent people or people with limited

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## High Court of Zambia

- Less than five years standing at the bar: K200 per hour
- More than five years but below ten years: K300 per hour
- More than ten years but less than 15: K360 per hour
- 15 Years and more: K460
- State Counsel: K540

Taking into account that the majority of Zambians earn less than K12 per day, these fees and costs mean that access to justice for many ordinary Zambians is an uphill battle.

## Inadequate Legal Aid

The Legal Aid Board (LAB) is the statutory body mandated to provide legal aid to indigent litigants or people who cannot afford to engage a private legal practitioner. The importance of legal aid is internationally recognised. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provide that "States should guarantee the right to legal aid in their national legal systems at the highest possible level..." Legal aid is an essential element for an efficient, effective and fair justice system. Without legal aid, many rights such as the right to fair trial would be negatively affected.

Although LAB has a relatively wide mandate to provide legal aid, its capacity to fulfil its mandate is constrained. It has a limited presence across the country. It only has offices in 10 towns -- Lusaka, Livingstone, Kabwe, Kitwe, Ndola, Mongu, Chipata, Solwezi, Mansa and Kasama. Therefore, apart from the Copperbelt, where it has offices in two towns, in the rest of the provinces, LAB only has one office. This means it is not easily accessible to many people across the provinces who need and deserve its services.

LAB, due to less attractive con-

A 2012 study on Access to Justice in Zambia by the Governance Department of the Ministry of Justice indicated that LAB lost about 40% of its lawyers in one year alone. As a result of understaffing, LAB lawyers are almost always swamped with cases. As a consequence, they are left with very little time to interview their clients and witnesses; and to research and prepare adequately for court. This has the possibility of affecting the quality of their services.

## Integrity of the Judiciary

Judges have enormous powers. They are entrusted with power to make decisions over life, personal liberties, property, rule of law, constitutional order and constitutional governance. Although many institutions have significant roles to play in the delivery of justice, ultimately it is the judiciary that is the guardian of the rights of individuals and society. Only an independent (impartial) and incorruptible judiciary can fulfill that role of safeguarding the rights of society and render justice based on law and evidence. Corruption and lack of independence affect the fairness of the decisions rendered by the courts and affect the legitimacy of the courts.

It has long been speculated that in some politically sensitive cases some judges fail to resist political influence and make politically inclined decisions. This has led to the emergence of what West African legal scholar, Kwasi Prempeh, calls the "Jurisprudence of executive supremacy." This basically means judges abdicate their duty to make decisions on the basis of evidence presented and the law and instead make assumptions in favour of the executive.

A recent example of this jurisprudence in Zambia is the Supreme

to investigate their suitability for judicial office. The majority of the Supreme Court held in favour of the decision of the president and in part supported their position thus:

**"...we are satisfied that bearing in mind the authoritative position of His Excellency, it would be illogical and unreasonable to hold that he did not receive credible information as President for him to act as he did. He is the overall authority on everything. His sources are exclusive to the public domain and must be impeccable."** (see the case of *Attorney-General Vs. Nigel Kalonde Mutuna and Others Appeal No. 008/2012/SC/8/185/2012* p.124)

Not only is such an amount of grovelling from the Supreme Court shocking, but calls into question the legitimacy of a decision made on the basis of such an assumption. It could be argued that the stance of considering the president as "overall authority on everything" is in violation of the Constitution, which creates three equal arms of government, that is, the executive, the legislature and the judiciary, which is the foundation of the system of checks and balances in modern constitutional states.

Corruption is another issue that affects the quality of justice dispensed by the Courts. Transparency International Zambia Chapter (TIZ) has persistently named the judiciary in its annual Bribe Payers' Index among the top five public institutions in Zambia prone to corruption.

During the launch of the Judiciary Service Charter, acting Chief Justice Lombe Chibesakunda acknowledged that corruption in the judiciary is real. She indicated that the scourge of corruption was so rampant that some judiciary officials had been impersonating her and in the process obtaining free things such as beer. When judges take bribes, they surrender their moral ability to deliver justice. Corrupt pressures and influences in the judiciary are given. Corruption in the judiciary is given. Poor and low quality of justice have very low quality of their cases and merits.

It should be discussed as a separate issue of the

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ditions of service as compared with the private sector, is usually unable to retain or attract some of the most experienced lawyers. This leads to both understaffing and high staff turnover.

February 2015 | *thebulletin record*

Court's decision in the now well-known case, where three judges challenged the decision by President Sata to suspend them and establish a Tribunal (headed by Malawian Judge, Lovemore Chikopa)

here to illustrate the challenges in the justice sector. To resolve these, there is need for wide review and reform of the whole justice sector as opposed to piecemeal approaches.

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References (0)

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September 1985 · The Journal of Modern African Studies

John Hatchard

Examines the response to the crime problem and the role of the legislature and judiciary. Assesses the effectiveness of these efforts which have been based on the policy of deterrence, generally by the regular imposition of long prison sentences, and discusses possible alternative approaches to the problem of crime control. The 'public' response as characterized by the infliction of 'instant ... [\[Show full abstract\]](#)

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Samwilu Mwaffisi

This study of the news content of the Zambia Broadcasting Corporation (ZBC) proceeds from the assumption that 'a national broadcasting system reflects the milieu in which it operates, thus taking on the colour of the social, political, economic and cultural climate' of its locale. Thus, hypothesizing that in Zambia, the broadcasting system would fulfil the objectives set by the ruling party and ... [\[Show full abstract\]](#)

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## The Socio-Economic Impact of Pre-trial Detention in Kenya, Mozambique and Zambia

October 2017 · Hague Journal on the Rule of Law

● Lukas Muntingh · ● Jean Redpath

The presumed link between the rule of law and development suggests that an operational justice system is key to development. The research sought to understand and quantify how the decision to detain an accused person affects his or her socio-economic situation. Data was collected in Kenya, Mozambique and Zambia. The findings suggest that the use of the coercive power of the state exercised ... [\[Show full abstract\]](#)

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## The equity impacts of community financing activities in three African countries

October 2000 · International Journal of Health Planning and Management

● Lucy Gilson · Denny Kalyalya · Felix Kuchler · [...] · Marius Ouendo

Although the Bamako Initiative from its very beginning was caught up in wider debates about the potential equity impact of any form of user financing, to date there has been little empirical investigation of this impact. This three-country study, undertaken in Benin, Kenya and Zambia in 1994/95, was initiated to add to the body of relevant evidence. It sought to understand not only what had been ... [\[Show full abstract\]](#)

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