



Policy Brief

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The Criminal Justice System in Zambia

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INTRODUCTION

Since the re-introduction of multi-party democracy in Zambia in 1991, some progress has been registered in the governance system of the country, including its criminal justice system. However, many challenges remain across Zambia's criminal justice institutions, and these inhibit the efficient and effective delivery of justice to its citizens.¹

One overarching structural problem centres on the uneasy coexistence of common and customary law. This gives rise to a troublesome paradox whereby the constitutionally recognised legal system is known and accessed by the few while the many - mostly rural people - only know, understand and access customary law.

This policy brief discusses the efficacy of Zambia's criminal justice system by focusing primarily on crime, policing, prosecution, the judiciary, prison service, customary justice and international instruments. Virtually all these facets share the same weaknesses with regard to capacity, for example poor funding, inaccessible data, inadequate remuneration of staff, poor training, poor infrastructure, and human rights abuses. The policy brief also recommends requisite key reforms for each sector.

ZAMBIA'S CRIMINAL JUSTICE SYSTEM AND POLICY RECOMMENDATIONS

Crime

Zambia is battling with a high and increasing crime figure, but unfortunately hard data is not released to

the public. Corruption is all pervasive in and outside government and at all levels of society, and is particularly manifest in the electoral process and public service delivery. Anti-corruption and oversight institutions such as the Anti-Corruption Commission, Parliament, the Auditor-General and the Ombudsman are under-resourced and underskilled and are therefore proving ineffective in combating this national scourge. Equally problematic are criminal activities relating to drug and human trafficking, money laundering, and illegal migration, but once again, there is inadequate data available on the scale of the challenges. The authorities also have inadequate capacity to deal with these pressing problems.

Policy recommendations

Because corruption thrives when officials receive inadequate remuneration and conditions of service are poor, it is recommended that these concerns be addressed. As important is the need to adequately capacitate anti-corruption institutions and providing for the protection of whistleblowers. Another priority is improving crime information management and documentation. Sensitisation programmes on drug and human trafficking and illegal migrants need to be introduced, broadened and reinforced.

Policing

As with crime, information on policing and human rights violations by police officers is largely inaccessible. With just 13 000 officers (less than half of the required strength), the Zambia Police Service faces serious operational capacity problems. This, coupled with poor investigative skills and lack of forensic capacity, results

in low successful prosecution rates, while some crimes are not even prosecuted. Recently, some reforms have been introduced, notably the establishment of victim support units whose education campaigns aim to sensitise the police and the public to the special needs of vulnerable persons like women and children. Other reforms include the establishment of oversight mechanisms such as the Police Professional Standards Unit, which investigates unprofessional conduct within the Police Service; the Public Police Complaints Authority, which investigates public complaints against the police; and the Commission for Investigators, which deals with complaints of abuse of power. However, these mechanisms remain weak and largely unknown by citizens. People's access to law enforcement services is also generally low.

Despite incorporating human rights into the police training curriculum, there are still high levels of human rights abuse, especially the use of excessive force. As a consequence, the Zambia Police Service is held in very low esteem, with more than half of adult Zambians dissatisfied with their performance. Nonetheless, the public image of the Police Service has been improving thanks to some of the reforms undertaken.

Policy recommendations

The Zambia Police Service requires comprehensive reforms encompassing - but not limited to - the following:

- Establishing an independent police complaints authority to investigate human rights abuses by the police
- Introducing programmes to raise people's awareness about their rights and the functions of police oversight mechanisms
- Putting in place sensitisation programmes on the dangers of drug abuse
- Ensuring that the Inspector-General of Police and the head of the Drug Enforcement Commission are appointed by independent bodies
- Strengthening police capacity in the areas of policing, upholding the rule of law, and respecting human rights
- Establishing forensic analysis facilities
- Introducing or strengthening HIV/AIDS programmes
- Reviewing upward penalties for convicted offenders
- Establishing a criminal justice inspectorate that regularly reports to Parliament

It is also of paramount importance that Zambia domesticate the Convention against Torture and criminalise acts of torture by law enforcement agencies and other security institutions.

Prosecutorial services

Zambia's prosecutorial services are another weak link in the country's criminal justice system. The Director of Public Prosecutions (DPP), who is appointed by the President, is at the centre of the country's prosecutorial services, but at present the incumbent is vulnerable to political interference, being an integral part of the executive. Also compromising the DPP's autonomy, efficiency and effectiveness is the fact that the Office of the DPP is funded through the Ministry of Justice and not directly by Parliament. The Office of the DPP also faces serious capacity problems stemming from various sources. For example, most lower court prosecutions are handled by police officers, not by lawyers. Compounding the problem is that prosecutors are located in different institutions. A comprehensive national criminal prosecutions policy developed as far back as 2000 is yet to be implemented.

Policy recommendations

The Office of the DPP needs to be reformed through a number of measures including: guaranteeing the DPP's independence and financial autonomy; bringing all public prosecutors under one roof; sensitising the public to the functions of the DPP; and urgently finalising and implementing the draft national criminal prosecutions policy.

The judiciary

To Zambia's credit, its constitution guarantees the rule of law and except in a few cases, proceedings are held in open courts to enhance transparency. The conduct of adjudicators is moderated by the Judicial Complaints Authority, which handles complaints by the public against judicial officers. Furthermore, judges enjoy adequate independence through an objective appointment process, security of tenure and adequate remuneration. Regrettably, this is not the case with the lower bench, which is mostly manned by contracted judicial officers who are vulnerable to dismissal, receive poor remuneration, and have poor conditions of service. The situation is particularly bad in the local courts – the courts of first instance for customary law matters – as these are manned by underqualified, poorly trained and poorly remunerated former civil servants on short contracts who are operating in poor facilities with poor infrastructure. Generally, the judicature suffers from an inefficient number of judges – only 40 for a country of 12 million people – and lack of gender equality on the bench.

The seriously understaffed courts have a large backlog due to poor court performance which is reflected by a low rate of disposal of cases. Funding for the judicature

is generally inadequate. Zambia also still has the death penalty on its statute book and there is no Act that prohibits corporal punishment, even though the courts have outlawed it.

Access to justice is a serious problem resulting from a combination of factors: poverty effectively prevents the poor from engaging legal practitioners; the poorly resourced Legal Aid Board lacks autonomy from the Ministry of Justice; the geographic reach of NGOs that provide free legal services is limited; there is a very low awareness among the poor and women of the availability of formal justice mechanisms; there is a limited number of courts in the countryside; and lawyers are virtually absent at lower courts, which compromises quality of service.

The juvenile justice system suffers from a fragmented legal framework with legislation implemented through multiple programmes in different ministries. Zambian police stations also lack facilities for detaining children separate from adults. Some innovative measures have been implemented to improve the juvenile justice system, for example child friendly courts. The government has started to introduce other legal reforms, but the process has been slow.

Another area of concern is the poor knowledge and use of international human rights instruments relevant to the administration of justice, even among judges. Zambia is still steeped in old English laws, practices and procedures which need to be modernised urgently.

Policy recommendations

The government should bolster projects already under way to implement human rights standards, guard the independence of the judiciary, and improve infrastructure and conditions of service of adjudicators. To improve access of justice to the poor, the Legal Aid Board needs to be adequately resourced and become more autonomous from the executive. More efficient case management techniques also need to be introduced to deal with the inordinate delays in disposing of cases. Another urgent need is for training of the deliverers of criminal justice, especially in respect of gender, juvenile and human rights issues. Also necessary is an audit of the domestication of international and regional instruments, followed by a programme to domesticate the treaties and conventions.

Customary law

Customary law has the distinction of being widely used but formally under-recognised. It runs parallel to the

centrally administered formal judicial system and is used in both traditional courts and local courts of the formal legal system. Though viable systems of justice delivery, traditional courts lack state-backed enforcement of their judgments. Yet people prefer customary criminal justice to local courts for various reasons: because traditional courts are considered to be more democratic and more familiar; they deliver justice promptly and efficiently; they are administered by local custodians of customary law; they are accessible even to the poor and women; and they use language familiar to the local people. In addition, the system is based on restoration. The system's disadvantages include: problematic enforcement of judgments; lack of funding; ill-defined legal status; non-recording of proceedings/decisions; and gender-based discrimination.

Policy recommendations

A key recommendation is that customary law be documented and tribunal proceedings and decisions be recorded. Traditional court officials also need training in basic human rights principles. In addition, government needs to be sensitised to the importance of the customary justice system and should encourage greater interface between the traditional and modern criminal justice systems.

The Zambia Prison Service

The Zambia Prison Service is without question the weakest link in the country's criminal justice delivery system and is currently facing serious and wide-ranging challenges.

For example, prisons are dangerously overcrowded. In 2007 they had a capacity of 4 000 but in the last half of the year held almost 15 000 inmates: just over 6 000 of these had been convicted and the rest were on remand. This means that almost 60 per cent of the prison population was on remand. Overcrowding escalates to other problems such as lack of sleep, inadequate medical facilities, inadequate transport, homosexual practices, HIV/AIDS and other sexually transmitted diseases, and shortage of bedding and food. Remandees – some without or on expired warrants – and convicted criminals are often kept together under inhumane conditions. Furthermore, the prison staff is seriously overextended with a ratio of one staff member to every eight inmates. In addition, the Prison Service is chronically underfunded, which accounts for most of the debilitating problems it is facing.

Notable is the absence of separate facilities for women in Zambia's prisons, while juvenile prisoners are kept in

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the same cells with adults, in violation of international instruments. Human rights abuses occur among all segments of prisoners.

Some efforts at improving the Prison Service are noteworthy, however. Some of them are:

- Steps are being taken to procure uniforms for staff and prisoners
- There is some political will to resolve transport problems
- The focus has shifted to rehabilitation and the establishment of open-air prisons
- Juveniles are separated from adults and female inmates are placed on police bond where there are no facilities for detaining women

Zambia has also signed a number of relevant international instruments but is yet to domesticate most of them.

Policy recommendations

To improve Zambia's Prison Service, prison decongestion should be high on the reform agenda. Measures that can be taken include: building more prisons, with special regard for the needs of women and juveniles; pardoning deserving prisoners; prudent use of the parole system; and encouraging the judiciary to impose non-custodial sentences for minor offences. Another priority area is training in human rights law so as to mitigate human rights abuses by warders. The Government should also be encouraged to introduce a prisons ombudsman to deal with human rights abuses and establish a legal department to monitor observance of and implementation of UN standards and conventions. In addition, Zambia should domesticate the international and regional instruments that it ratifies. Overall, a comprehensive master plan strategy must be instituted to deal comprehensively with the above problems.

International conventions and protocols

Zambia is a member of the African Union, United Nations and other regional and international organisations and has signed and ratified many international instruments on security, crime and law enforcement. Regrettably, it has domesticated only a few of these

instruments, leading to fears that Zambia lacks the requisite commitment. This low domestication rate also reflects the country's limited capacity in processing protocols.

Policy recommendations

Zambia should ratify and domesticate all relevant international and regional instruments. To reach this goal the country needs to enhance its capacity to process and domesticate these instruments so as to derive maximum benefit from them.

CONCLUSION

Zambia's criminal justice system is in a chronically weak state. To remedy this, it is vital to harmonise the country's customary and formal justice systems. Resolving this legal dichotomy is one of the complex challenges of reforming the criminal justice system in the country.

Zambia clearly needs to undertake major reforms in all its criminal justice institutions to improve efficiency and effectiveness in the delivery of justice to all its citizens. Otherwise access to timely justice for most Zambians will continue to be severely compromised.

NOTE

- 1 This policy brief is based on ISS monograph 159, *The Criminal Justice System in Zambia; Enhancing the delivery of security in Africa*.

