



**Zambia - Crime and Criminal Justice
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Introduction

This paper gives an overview of the state of crime and the criminal justice system in Zambia. It highlights the main issues surrounding the containment of crime and gives an indication of requisite reforms that would enhance the performance of the criminal justice system in the country. The aim is also to contribute to the generation of knowledge on the inadequacies of the criminal justice system and help close the information gap.

Many notable efforts have been made and continue to be made by the government in combating crime. For example, the country is a member in a number of regional and international institutions that are organised around issues of crime; research into illicit cross-border activities including human trafficking have been going on and, in compliance with human rights doctrine demands, corporal punishment was outlawed even though enforcement is lacking in many areas. A number of factors all coalesce to cause problems that are evident in the criminal justice system the country. Problems range from those inherited from the colonial regime over 40 years ago to more recent capacity related issues. A good example is that continuous membership in key crime fighting organizations is essential for the country to benefit from mutual and essential exchanges of crime combating techniques as well as for enhancing respect for rule of law and upholding human rights in situations of scarcity, yet the country often has intermittent membership in key organisations.

This preliminary review of the country situation has identified the following key issues as meriting attention in the country review process to be undertaken by the local team of consultants.

Colonial legacy

- ❖ The major hurdles to progress in the criminal justice system in the country are noted as emanating from antiquated laws that work against transformation and efficient justice delivery. Much of the legislation is based on amended colonial laws. The implication is that contemporary key issues and concepts need redefinition so that laws can embrace them.

Modern vs Traditional justice- A Necessary Paradox

- ❖ The majority of people residing in rural areas give primacy to customary law in most parts of the country. This customary law is applied by Traditional Courts that are run by traditional leaders who are not acknowledged as part of the judicial system in the *Zambian Constitution*. Because of inaccessibility of the state system, many citizens are thus forced to turn to customary justice. Customary law is also applied by Local Courts, the lowest courts in the constitutional hierarchy of courts in Zambia and by far outnumbering the “modern law branch”. The version of customary law adopted from the colonial regime is still in force, and has remained virtually unchanged.

- ❖ Courts are generally congested and there are significant delays in trials whilst the accused languish in detention. In many cases, 6 months elapse before a magistrate can send a defendant through to the high court. It usually takes the magistrate months to prepare the court record and in some instances this can take up to a year. And once in High Court, proceedings can sometimes last an average of six months. Poor remuneration and poor working conditions force magistrates to leave state employment.

- ❖ Generally high staff turnover in the criminal justice system leads to institutional memory loss. Finally, the question of who exercises oversight causes problems as the separation of powers between the judiciary and the executive is blurred.

- ❖ Local court structures are part of the formal legal system but they are generally perceived as being troubled. There is no formal and structured form of overview of the cases that takes place and though there is administrative control, there is no substantive guidance because of the different laws they implement. The local court is a structure that is not linked to the Traditional Courts and yet in rural areas, chiefs are required to recommend potential candidates who are knowledgeable of the local customs and this gives them influence over the institution.

- ❖ Traditional Courts are very punitive which is very inconsistent with the advocated for respect of human rights and dignity.
- ❖ Both traditional and Local Courts are used largely by women because the nature of issues they deal with are family related- land related disputes, adultery, divorce and domestic violence. Often cases and disputes are passed back and forth between the two institutions. This leaves poor citizens in particular distressed and vulnerable to insecurity triggered by a non- protective and unfair justice dispensing system. Land related disputes, adultery and divorce are all central to livelihoods and leave the poor worse off.
- ❖ Local and customary courts are involved in most civil cases at the local level. In the latter case, prominent local citizens the hearing and invoke customary laws as they see fit such that many judgments violate the Penal Code and discrimination against women is rampant (ICJ). Subordinate courts adjudicate on appeals from local courts which are manned by either a single magistrate (qualified lawyer) or a lay person. The Subordinate Court Act established these and the jurisdiction is dependent on its grading and the magistrate manning it.
- ❖ Divergences in uncodified customary laws result in differing levels of satisfaction in decisions made by the customary local courts. This deprives the majority of citizens with access to fair justice. Cultural variations complicate the task of standardising customary justice and this is a challenge for the criminal justice system. Those seeking justice find it difficult to appeal to the Magistrate Courts, High Courts and the Supreme Court because of financial and logistical constrains
- ❖ There have been allegations of executive interference in the work of both the Task Force on Corruption and the Anti-Corruption Commission as well as in the manipulation of the judicial process.

Crime

- ❖ Armed carjacking, mugging, residential burglaries and petty theft are commonplace in the capital as well as in downtown commercial areas. The burglary victimisation rates in Zambia, Lusaka, were estimated at 10.9 percent in 2003.

- ❖ Economic crimes appear to be perpetrated internally and such high levels of internal risks are set to retard any overall developmental gains and they consequently increase the cost of doing business in the country. Perceptions also indicate that a significant percentage of these can be attributed to organized crime.

- ❖ The incidence of child rape In Zambia has increased by up to 60 percent with teachers being the largest group of perpetrators. Justice for rape victims is delayed as evidence has to be sent to South Africa for analysis and this always takes time.

- ❖ Weak institutional capacity for effective policing, coupled with a dearth of basic information on crime and criminal justice statistics such as crime, prosecutorial, court and prison data, constrain remedial action (e.g. Zambia has court records for the period 1998-1999 but no crime data from the police for the same period).

- ❖ Child justice suffered a major slide back when in 2004, the centralized efforts at delivering justice to children were suddenly decentralised to all courts.

- ❖ According to UNHCR reports, Zambia accommodates the bulk of the refugees in southern Africa and this further strains the economy and policing services.

Policing

- ❖ Half the citizens of Zambia are dissatisfied with the performance of the police force. Problems such as the lack of professional conduct, investigatory skills and discipline in the force are rampant. Another problem is that despite human rights

awareness programmes, the use of excessive force by the police remains. Low remuneration and inadequate accommodation also make the force vulnerable to corruption.

- ❖ Structural problems in the Police department hinder effective policing. The heavily centralized structure leads to delays in decision making and implementation. All the police posts in the country report to one of the nine provincial stations and these in turn report to the central station.
- ❖ Extra-ordinary power vested in the president to indefinitely detain any individual violates the procedural safeguard of human rights of the right to legally challenge a detention in a court of law
- ❖ Extra-judicial behaviour comes to the fore through the criminalisation of political behaviour. Some of the legislation against political behaviour is not in line with regional, continental and international standards.

Prisons

- ❖ High incarceration rates have congested the prisons in Zambia. And unhealthy mix of juveniles, mentally ill-inmates and nursing mothers is common in many facilities. Resource constraints in the government's legal aid office results in delayed justice.
- ❖ Reports indicating that law enforcement agencies, including the police and the judiciary, both discount violence against women as a domestic matter and this takes the matter out of the official arena. There have been incidences of deliberate sanctioning of violence against women by the criminal justice system functionaries.
- ❖ The Zambia Criminal justice system has been accused of failing women especially girls and orphans who are the major victims of sexual abuse. These

groups face numerous hurdles when it comes to reporting sexual crimes and coercion to drop charges is rampant. Police departments are known for not being user friendly to victims of sexual abuse. As a result, gender inequality is widespread since the constitutional and legal systems have not addressed womens' exploitation, discrimination and marginalization in the last forty years.

These issues point out problems in which the criminal justice system appears to falter in the country. And with good governance hinging on upholding the rule of law and respect for human rights, it is our hope that these pointers will be expanded on in the country review that we hope will give us an update as well as new information on the situation and actual experiences of the citizens and institutions regarding criminal justice delivery by the state.