

the Constitution. To that effect, on 31<sup>st</sup> December, 1994, the Government passed the Judicature Administration Act.<sup>41</sup>

Under this Act, Judiciary autonomy has two elements. One is Administrative autonomy provided for by section 3, 4 and 5. The second is financial autonomy provided for by section 6 and 15 of the act. Administrative autonomy and financial autonomy are closely interlinked in that for the judiciary to make any administrative decision which has a financial implication; it should have the financial autonomy meaning there should be no interference from outside bodies. Administrative autonomy cannot be meaningfully implemented without financial autonomy. Ideally the judiciary should have the administrative autonomy but in Zambia this took a number of years to achieve. However, in 2007, the judiciary managed to administratively delink from Cabinet Office and the Ministry of Justice. It is sad that to date the Zambian judiciary does not have financial autonomy.

Currently in Zambia, the executive has an upper hand in the selection of judges to the bench. The president appoints the judges and ratification is done by parliament. This means most judges owe their allegiance to the president and that it is difficult for such appointees. In such a system the executive exert various forms of pressure to influence the outcome of the justice processes using threats, intimations, bribery, but also the manipulation of judicial appointments, salaries and conditions. Judges are under pressure to rule in favour of powerful political entity in this case the government of the day, providing legal protection for illegal practices including fraud and corruption. In a corrupt judiciary, high profile cases involving senior officials are unlikely to be investigated and prosecuted and sanctions are unlikely to be enforced. Such state of affairs is against the principle of judicial independence which is supposed to be one of the paramount principles for the smooth running of the judiciary.

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<sup>41</sup> Chapter 24 of the Laws of Zambia

#### **4.4.3. Judicial Appointments, Discipline, Transfer and Promotion Procedures**

Transparent and rule-based appointment, evaluation, discipline and promotion procedures support the development of a competent and professional judiciary and ensure that decisions are free from undue influence and political interference. An objective and transparent process of appointment ensures that the most professional candidates are selected and reduces the risk of manipulating the appointment process to select pilant and corruptible judges. Promotion and disciplinary procedures should also be made transparent to prevent them from being manipulated by corrupt senior officials to tighten their grip on the judiciary. In some countries, reforms have included the creation of independent bodies such as judicial councils to oversee the appointment and discipline of judges. Such councils' members should be appointed in a transparent manner, using objective criteria. In Argentina, for example, the judicial council was created in 1994 as part of the Constitutional reform and has been operating since 1998. It is responsible for appointment (pre-selection for executive and legislative choice), transfers, training, and discipline of judges.

In Zambia efforts have been made by previous constitutions reviews to ensure that appointment of judges should be by an independent body, in this case the judicial service commission, then ratification by parliament. This has not yielded any results as the status quo according to Article 93(1) and 95(1) of the Zambian Constitution; Supreme Court judges are appointed by the president and subject to ratified by National Assembly while High Court judges are subject to ratification by National Assembly appointed by president on advice of the Judicial Service Commission. In this type of scenario, it's very easy for one to allude to the fact that too much power is vested in the president as regards to the appointment of the judges.

#### **4.4.4. Providing Adequate Resources**

The judiciary must be granted the financial and human resources to perform its functions adequately. In most developing countries, general budgetary constraints have a detrimental impact on the judiciary, affecting its capacity to operate effectively, attract and retain well trained and capable staff. Considerable resources are needed to improve

judicial services, provide judicial staff with adequate training, wages and working conditions and provide incentives to reduce corruption.<sup>42</sup> Due to shortages of resources, justice buildings and offices are not properly maintained and justice staff are poorly trained or paid. Judges and magistrates may also have insufficient access to libraries, computer, internet and legal materials. This situation hampers the efficiency of court personnel, creating considerable backlogs of cases.<sup>43</sup>

The Zambian judiciary is an example of an institution which has in the past been adversely affected due to budgetary constraints. The government is responsible for providing equipment and maintaining courthouses, offices and lodges for judges, but the buildings are in shocking condition. Magistrates have no libraries or access to electronic case processing, unlike colleagues in the higher courts. Moreover their salaries and conditions of service are not as competitive as their colleagues in the higher courts. This hampers their efficiency, creating an inevitable backlog of cases. These problems were acknowledged by the late president Levy Patrick Mwanawasa in a speech at the opening of the Magistrates court complex in Lusaka in March 2006.<sup>44</sup> In particular the general administration aspect, the subordinate courts has been adversely affected by the problem of insufficient funds to meet the conditions of service for magistrates and the other staff. This coupled with the low salaries has a direct bearing on the morale and ultimate performance of the subordinate court in handling cases. The Zambian scenario has gone to the extent where judicial officers go on strike year in year out. An example would be in 2004, when the unionized judiciary workers had given government 48 hours to pay them overdue housing allowances failure to which they would strike. They actually went on strike seven days later and this lasted for almost a month. In April 2005 subordinate court business came to a stand when magistrates who are actually not unionized went on strike for close to a month.<sup>45</sup> In 2006, Magistrates gave government an ultimatum to have their

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<sup>42</sup> Chene, "Supporting Zambian Judicial Capacity to Handle Corruption Cases," 4.

<sup>43</sup> Chene, "Supporting Zambian Judicial Capacity to Handle Corruption Cases," 4.

<sup>44</sup> Davie Chikalanga, Goodwell Lungu and Ngozi Yezi, *Zambian Judiciary struggles to modernize*, 289.

<sup>45</sup> Interview with a judicial worker, February 16, 2012

salaries and conditions of service improved, but due to lack of response by the government, they actually went on strike which lasted for over three weeks through to the tripartite elections of 28<sup>th</sup> September 2006.<sup>46</sup> For sure this state of affairs does not auger well for the maintenance of law and order and criminal justice in Zambia.

To a larger extent the uncompetitive salaries earned by magistrates and other judicial staff sometimes force them to use illegal means such as bribery and other corrupt practice to make money to sustain their families. For example in 2002 a magistrate Nkhoma in Kabwe was arrested by Anti-corruption Commission for allegedly soliciting an amount of K300, 000 as a bribe from a suspect.

The inefficiencies in the Zambian judiciary are also evidenced by the number of backlog of cases. For example the recent report on the National Audit of Prison Conditions in Zambia conducted in May 2009 by the Zambian prisons service reviewed that the Zambian prisons have an official capacity of 5,265 prisoners, but as at that date there were over 14,377 prisoners. This represents an overload of 173%.<sup>47</sup> To a larger extent the reasons for such overloads can be attributed to lack of adequate human and financial resources in the judiciary to enable it dispose of certain case in the quickest possible time. The following table and chart shows the provincial population status of the prisons in Zambia.

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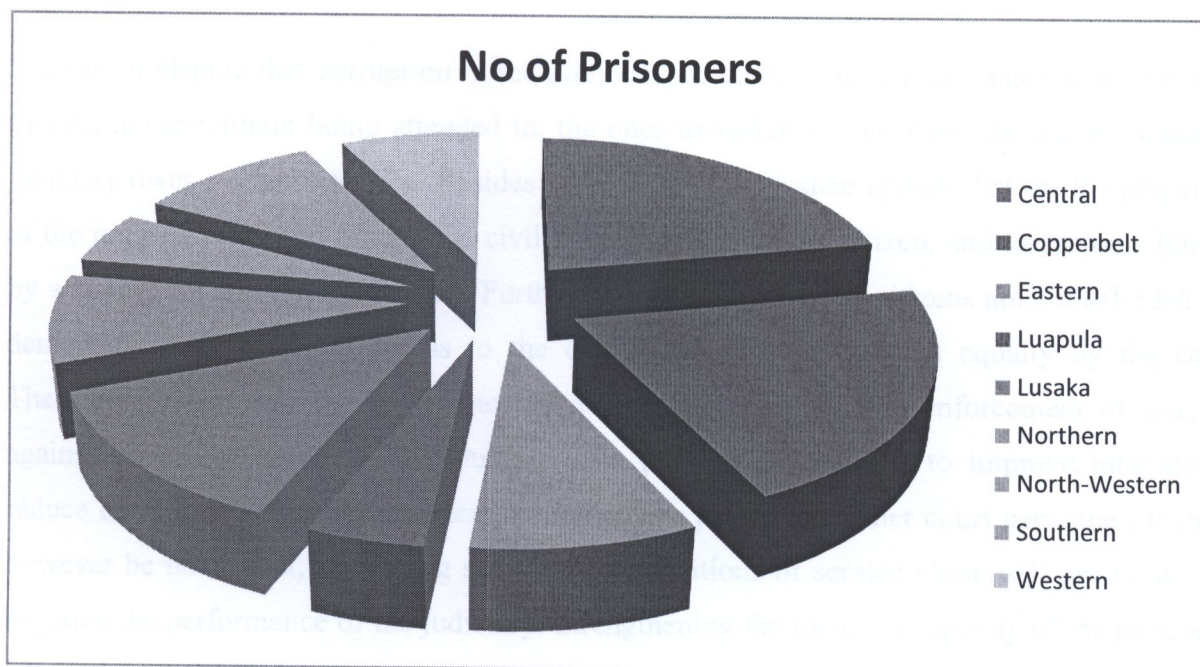
<sup>46</sup> Interview with a judicial worker, February 16, 2012

<sup>47</sup> The Prisons Report, Governance Secretariat "National Audit of Prison Conditions in Zambia" (May 2009).

### Provincial Population Status

PROVINCE	MALE	FEMALE	TOTAL	OFFICIAL CAPACITY	% OVERLOAD
Central	3,077	67	3,144	1,055	198%
Copperbelt	2,948	75	3,023	1,191	154%
Eastern	1,227	19	1,246	324	285%
Luapula	609	37	646	268	141%
Lusaka	1,774	88	1,863	435	328%
Northern	1,188	43	1,231	450	174%
North-Western	712	14	726	329	121%
Southern	1,379	40	1,419	818	73%
Western	1,058	22	1,080	395	173%
<b>National Total</b>	<b>13,972</b>	<b>405</b>	<b>14,377</b>	<b>5,265</b>	<b>173%</b>

Table 1- Extract from the Report on the National Audit of Prison Conditions in Zambia (May 2009)



Therefore recognizing the importance of a clean judiciary for the enforcement of sanctions against corruption requires that countries take preventive measures to improve integrity and reduce corruption in the court system, which covers judges and other court personnel. In Zambia the inadequate funding of the judiciary is impacting negatively on its functioning. It is undermining the institutional autonomy of the judiciary.

#### **4.5. Conclusion**

In conclusion S.I No. 61 has not in any way helped the judiciary as a whole to operate in an efficient and effective way. The reason for this is that only a certain category of judicial staff within the judiciary are taken care of year in year out. In Zambia, the dispensation of justice is a mandate for the judiciary as a whole. Therefore, for it to operate efficiently and effectively, the whole judiciary should be taken care of in terms of salaries and conditions of service. It is also important to note that a lot of Zambians access justice through the lower court hence quite a backlog of cases are usually disposed off by the lower courts. Very few cases go on appeal to the higher courts. The low salary of the other judicial staff in Zambia disadvantages the judiciary to attract qualified legal personnel or retain them. These low salaries do not enable the court staff to support their families in a secure environment, but prompt them to supplement their incomes with bribes.

It is not in dispute that corruption in the *Zambian* judiciary is one of the major problems and if this continues without being attended to, the ones to suffer are the *Zambian* masses whom the judiciary owes a certain service. Besides corruption in the justice system distorts the proper role of the judge, which is to protect the civil liberties and rights of citizen, and to ensure a fair trial by a competent and impartial court. Further in corrupt judiciaries, citizens are not afforded their democratic right of equal access to the courts, nor are they treated equally by the courts. Therefore recognizing the importance of a clean judiciary for the enforcement of sanctions against corruption requires that countries take preventive measures to improve integrity and reduce corruption in the court system, which covers judges and other court personnel. It should however be noted that, improving salaries and conditions of service alone will not in any way improve the performance of the judiciary. Strengthening the financial capacity of the judiciary is key in that it will enable the institution eradicating all its bottle necks. The executive, through the treasury should give the judiciary, the funds it requires to operate properly and effectively as an

autonomous institution. The executive should also give the judiciary financial autonomy. The judiciary should be allowed to manage its own payroll and outside intervention should be eliminated. All in all the judiciary needs adequate funding and financial autonomy to enhance its institutional autonomy. This will enhance the efficiency and effectiveness of the judiciary and will earn the confidence of the community it serves.

## CHAPTER FIVE

### GENERAL CONCLUSIONS AND RECOMMENDATIONS

#### 5.0 Conclusions

It is recognized that for any judicial system to function effectively and fulfill its mandate as an umpire of justice and upholding the rule of law in a democratic society, it is necessary that the institutions that dispense justice are respected and their dignity upheld. However this respect should not be an end in itself but should be a means to enhance the administration of justice. Further a strong judiciary should have sufficient institutional capacity to handle legal cases in an efficient and impartial manner as well as mechanisms in place to ensure its integrity, accountability and independence.

This study sought to evaluate whether improvement of salaries and conditions for judges has an impact on the effectiveness and efficiency of the judiciary. In particular was Statutory Instrument no 61 of 2010 which basically improved salaries and conditions of service for judges for 2 consecutive years beginning 1<sup>st</sup> April 2010 to 30<sup>th</sup> March 2012. It further sought to identify the implications of improving salaries and conditions of service for judges only and not for judicial staff as a whole. Other areas of concern in this study was a comparison of judges statutory salary adjustment in comparison with salaries of other judicial staff at the lower bench and what needs to be done by government to ensure an effective and efficient justice through the harmonization of salaries and conditions of service for both the higher bench and the lower bench. It also looked at how the low salaries and uncompetitive conditions of service affect the smooth operation of the judiciary. It looked at corruption as one of the major vices which has affect the Zambian judiciary and how this can be reduced or eradicated so that the judiciary earns the respect it deserves form the public.

To this effect the study established that government has in the past made efforts to increase and improve salaries and conditions of service for judicial staff of the higher bench only. This is evidenced by the statutory instruments promulgated year in year out and the latest being statutory instrument no 61 of 2010. As for judicial staff in the lower court, not much effort has been in by government to improve salaries and conditions of service. This is evidenced by the fact that, the

salaries and conditions of service for members of the lower bench are not statutory. Whereas the conditions of service for judges are provided for distinctly under the an act of parliament which is the Judges Conditions of Service Act <sup>48</sup>, the conditions of service for magistrates follow those of the civil service which are generally dependent upon negotiated collective agreements between the Public Service Unions and Government. This does not auger well especially that the members of the lower bench do not belong to any union. The magistrates are never represented and do not participate in the negotiations between the trade unions and government, but are made to work under the same negotiated conditions of service between the public service union and the government. The government has for long time neglected the welfare of the members of the lower bench, but concentrated so much on the welfare of the members of the higher bench. What should be taken into consideration is the fact that both the members of the higher bench and lower bench are subjected to the same risk factors in the discharge of their judicial functions. What I mean by risk factors is that they all do the same type of functions which is the dispensation of justice which involve certain emotions of litigants at the litigation.

As regards salaries of members of the higher bench, the authority that approves the salaries, salary structures and other conditions of service is the executive i.e. the president. As with the other members of the judiciary, their conditions of service are determined by the Judicial Service Commission which is empowered by the Judicature Administration Act. This has not worked well in the past in that the executive has an upper hand in determining the conditions of service despite the judicial service commission having the mandate to do this. What I mean by this is that the judicial service commission is to determine the conditions of service for these staff within the personal emoluments ceiling dictated by budget office. What this means is that the commission cannot improve the salaries above the personal emolument ceiling set by budget office. This to a larger extent contributed to the uncompetitive salaries of the other members of the judiciary who sometime resort to other means of supplementing their mega salaries and poor conditions of service.

In Zambia when you look at the appointment mode of members of the higher bench and also the way conditions of service for judicial staff is arrived at, it is not in dispute that there is a lot of interference from the executive arm of government. Judges and other personnel need to be able

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<sup>48</sup> Chapter 277 of the laws of Zambia.

to make decisions free from interference from the state and the private sector. If they are motivated to ingratiate themselves with an authority with influence over their careers, or to top up their earnings with money from one of the parties to a case, the judicial process will have been corrupted.<sup>49</sup> The independence of the Judiciary is therefore crucial to its effectiveness. But independence is not enough. A fair judiciary must also be subject to mechanisms that hold it accountable to the people. The challenge is to design appropriate institutional structures and legal culture that uphold the independence, impartiality and integrity of the judiciary, while rendering it answerable for its decision.<sup>50</sup> However in designing institutional structures, it is not sufficient to write judicial independence into statute books, but judges and other court officials need to be independent in practice. In Zambia independence of the judiciary is in statutes but this in practice is not achievable.

Statutory Instrument No. 61 of 2010 basically was a move taken by government to increase salaries for members of the higher bench in the judiciary. This move however is necessary but not sufficient. It is not sufficient in the sense that, the members of the lower bench and other court staff are not taken care of although they discharge the same type of function and most of them have the same qualifications. This is insufficient again because apart from improved salaries and conditions of service, the Judiciary needs adequate resources to enable it run efficiently and effectively.

While it is difficult to draw a causal link between severe underfunding and corruption, severe underfunding always has an impact on the judiciary as it seeks to supplement its needs from other sources. Under funded judiciaries like the Zambian judiciary are unlikely to offer the salaries and benefits that will attract and retain high-quality and qualified candidates.

The Zambian government has a duty to provide adequate resources to enable the judiciary to perform its functions properly. Adequate salaries for both members of the higher bench and members of the lower bench means a wage that ensures both categories of court officials can

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<sup>49</sup> Susan R. Ackermans, *Judicial independence and corruption. Global Corruption Report, Transparency International* (New York: Cambridge University Press, 2007), 15.

<sup>50</sup> Ackermans, *Judicial independence and corruption*, 15.

support their families, remain loyal to their profession and, at least, have no economic 'need' for resorting to corruption. The judiciary in Zambia is now autonomous, meaning it should be able to run its own affairs without interference from any outside forces. It is therefore imperative that the institution should ensure that salaries and conditions of service for other support staff and administrative staff are also improved. This is necessary due to the fact that this category of personnel is with no doubt have a critical role to play in the dispensation of justice and access to justice. There the fight for improved salaries and conditions of service should not be concentrated on the members of the higher and lower bench but for the whole judiciary. If this is not done, then the effort to fight internal court corruption in the institution will not be meaningful. Internal court corruption occurs when court officials (Judges, Magistrates and Support personnel) engage in procedural, substantive and/ or administrative behavioral patterns for private benefit.<sup>51</sup> Examples include cases where court users pay bribes to the court's support personnel in order to alter the legal treatment of files or evidentiary material; where users pay bribes to court employees to accelerate or delay a case or to illegally alter the order in which the case is to be attended or heard by the judge; or where court personnel embezzle public or private property that is in court custody.<sup>52</sup> This type of corruption is common in most judiciaries, and therefore one way of ensuring its eradication or reduction is ensuring that the salaries and conditions of service for all levels of staff in the judiciary is well taken care of and not only for members of the higher bench.

## **5.1 Recommendations**

Improving salaries and conditions of service for judges is not the only way of improving the efficiency and effectiveness of the judiciary. For the judiciary to operate to the expectation of the public, a number of areas need to be improved. The following are some of the recommendations other than improvement of salaries and conditions of service for judges, which should be taken into account if the judiciary is to be effective and efficient in its operations.

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<sup>51</sup>Buscaglia Edgardo, "Global Corruption report" (2007) 67

<sup>52</sup>Buscaglia Edgardo, "Global Corruption report" (2007) 68

### **5.1.1 Salaries for Judicial Officers**

Since conditions of service for judges are statutory and provided for under judges conditions of service, the magistrate's conditions of service should also be statutory and this can be done by the inclusion of magistrates in the existing Judges condition of service Act. Besides this will be justified due to the fact that currently magistrates are not represented by any union and section 2 (1)(e) of the Industrial and Labour Relations Act effectively excludes Judges and Magistrates from participating in Industrial action.

The salaries for all subordinate court Magistrates should be increased because currently the gap between the salaries of Judges and Magistrates is very wide and there is need to narrow this gap.

The existing salaries in the judiciary are uncompetitive. There is need to increase the salaries in the judiciary to enable the judicial officers have settled minds as they discharge their judicial function.

### **5.1.2 Judicial Appointments**

Currently the executive through the president appoints members of both the higher and lower bench. This is against the principle of separation of powers. It is therefore recommended that an independent body should make these appointments to enhance separation of powers. Further vacancies, job requirements and selection criteria should be widely advertised.

### **5.1.3 Professional Training**

To avoid poor judicial decision making due to lack of knowledge and analytical skills; inability to assert authority and maintain accountability function and to avoid bribes, abuse of court processes to delay cases for personal gain, it is recommended that adequate professional training be conducted for judicial officers through an organized, systematic and continuing programme of education. An independent judicial council should have responsibility for judicial training.

### **5.1.4 Adequate Resources**

To ensure that cases and appeals are dealt with expediently, and that cases are heard and judgments delivered without undue delay, it is recommended that the judiciary be provided with adequate resources to function, including a sufficient number of judges, magistrates, court staff

and equipment; rules of court should discourage excessive adjournments and ensure that judges and magistrate have adequate time to both hear cases and prepare judgments. Where there are excessive backlogs, it might be necessary to prioritize and sometimes purge old case.

### **5.1.5 Other Conditions of Service for Judicial Officers**

Government should introduce certain conditions of service to all judicial officers and not only to the members of the higher bench. Some of the conditions of service which would be of great help to all judicial staff are as follows-

#### **(a) Utility Allowances**

This should include telephone allowance, electricity allowance, water allowance, educational allowance and Non-private practice allowance.

These allowances should be provided to both the members of the higher bench and the lower bench. It should however be paid according to the salary scale. This will enable the judicial staff to have free and settled mind even as they discharge their judicial function.

The government should ensure that these all these are statutory conditions of service and should be provided for under an Act. However government should also ensure that it honors all the conditions of service it accords to judicial officers. Government on the other hand should not negotiate certain conditions of service domestic furniture, house loans etc which would be a huge cost to government, further it should not make the these conditions of service statutory in that it compels the government to honour them. From the time government introduced domestic allowance as a condition of service for members of the higher bench, it has had difficulties to implement it. It was implemented in 2002, and only to a few judges.

This type of allowance is no doubt a huge cost government and should not be encouraged. Instead money should be channeled to other needy areas within the judiciary.

(b) **Education Allowance**

This should be introduced and given to all members of the higher bench and lower bench. It will cushion the judicial staff from the impact of expensive schools and related bills incurred in respect of their children's education. This is possible since other institutions actually offer such a service to its employees. Example of such institution is the Electoral Commission of Zambia which offers this allowance to the commissioners, their personal secretaries and stenographers.

(c) **Medical Treatment**

Currently this allowance is applicable only to members of the higher bench and only applies when the same is to be undertaken outside the country. This should be provided to all judicial officers for we need a healthy judiciary if dispensation of justice is to be expedited. Also it should apply to treatment within the country as well. This is inevitable because medical treatment has become very expensive even within the country.

### **5.1.6 Transparency**

The importance of transparent and predictable procedures for the day-to-day operation of justice systems cannot be over-emphasized.

However in the judiciary there have been cases of impropriety going undetected, poor quality decisions being made due to lack of access to information by judicial officers, risk of disappearance of case files and delays in retrieving case files, which increases the potential for extortion to expedite cases. To avoid the above problems in the judiciary, it is recommended that transparent court decisions, procedures and fees be introduced. This should be facilitated by adequate IT resources that provide judges and magistrate with access to information and the possibility of communicating with one another, making it easier to track and retrieve case files.

### **5.1.7 Regulatory Mechanisms at the Judicial Complaints Authority**

In terms of regulatory mechanisms, the Judicial Complaints Authority should be strengthened by revising the enabling Act to allow for enforcement powers. Appointment of commissioners and

the Secretary should equally be conferred on an independent body and not the executive through the president to enhance independence.

### **5.1.8 Proceedings at the Judicial Complaints Authority**

With respect to the Judicial Complaints Authority as regards proceedings, the enabling Act provides for confidentiality of proceedings to the extent that the members and Authority are proscribed from disclosing details of both the proceedings and the judicial officer against whom a complaint was made. This restriction or veil of secrecy ought to be removed to allow free access to the information provided once the case has been concluded, which should operate as a deterrent to abuse of powers.

### **5.1.9 Appointments in the Judicial Complaints Authority**

Powers to appoint the Secretary of the Judicial Complaints Authority and the Commissioners therefore be conferred in a collective independent judicial body and not the president of the republic. This would enhance both independence and objectivity of the office holder.

The Judiciary is one of the institutions involved in governance. Therefore there is need that such an institution should be effective and competent so that it functions efficiently. Such efficiency can only be attained if certain mechanism and requirements are in place. Competitive salaries and conditions of service for judges is of importance if the judiciary is to attract qualified legal personnel or retain them. However improving salaries and conditions of service for Judges only is not enough since effective dispensation of justice encompasses the whole judiciary. Government should therefore ensure that all judicial officers are taken care of, when improving salaries and conditions of service to ensure judges, magistrates and other court staff support their families in a secure environment. However competitive salaries and conditions of service alone is not enough. There is need for government to recruit more court officials, more continuous professional training to facilitate quicker disposal of cases. The method of appointing judges, magistrates and court justices requires reform and a policy on further training and capacity building of judicial personnel is required.

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## INTERVIEWS

Note: ("All interviews were confidential; the names of the interviewees are withheld by mutual agreement.")

## **Annex 1: Research Tool**

The information you shall provide will be considered confidential and will only be used solely for this purpose.

No names shall be revealed and no third parties will have access to this information.

Researcher: Isabel W. Chinji, University of Zambia.

### **INTERVIEW SEMI-STRUCTURE QUESTIONNAIRE**

1. Are you aware of the prevailing salaries and conditions of service for Judges and other judicial officers?

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2. Is there any difference in the way the salaries for Judges and salaries for other judicial officers are arrived at? If yes please provide an explanation.

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3. Do you think the salary gap between the members of the higher bench and that of the lower bench has an impact in the operation of the judiciary as a whole?

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4. Do you think improving salaries and conditions of service for judicial staff does help the judiciary to operate efficiently?

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5. What do you think should be done by Government to address the concerns you have raised in order to improve the efficiency and effectiveness of delivery of legal services by the judiciary?

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Thank you for your time

