

**AN ANALYSIS OF WHETHER OR NOT STATUTORY
INSTRUMENT NO. 61 OF 2010 HAS IMPROVED ACCESS TO
JUSTICE AND DELIVERY OF LEGAL SERVICE**

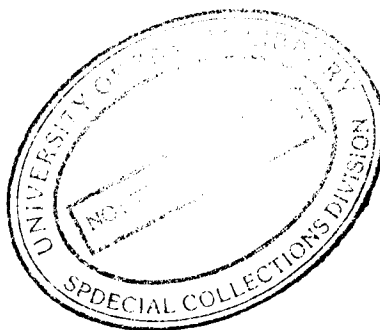
**A DIRECTED RESEARCH SUBMITTED TO THE SCHOOL OF LAW OF
THE UNIVERSITY OF ZAMBIA IN PARTIAL FULFILLMENT OF THE
AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B)**

BY

**ISABEL WILLIMA CHINJI
26065568**

UNIVERSITY OF ZAMBIA

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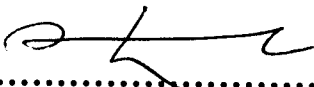
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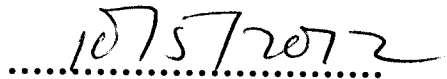
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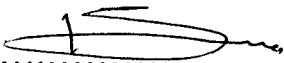
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ABSTRACT

The Zambian Judiciary is composed of the higher bench, the lower bench and Administrative staff. All the three categories of staff in the judiciary are involved in the administrative justices. To a larger extent, for any institution to operate effectively and efficiently, salaries and conditions of service for staff among other things should be well taken care of. In Zambia the conditions of service for Judges are provided for distinctly under an Act of Parliament viz, the Judges conditions of Service Act Cap 277. Their salaries and conditions of service are promulgated through statutory instruments and are increased almost every year, the latest being S.I No 61 Of 2010. On the other hand 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. They are made to work under the negotiated conditions of service and yet they do not belong to any union.

An analysis was done therefore to find out whether increasing Salaries and Conditions of Service for Judges only does improve Access to Justice and Delivery of legal Service. To find out the situation on the ground as regards to this problem, interviews were conducted with key personnel from various institutions. It was also important to analyse pertinent documents as regards to salaries and conditions of service for Judges and other judicial officers. It is not in dispute that a lot of effort is put in by the Government to improve Salaries and Conditions of Service for the higher bench only and this is evidenced by the promulgation of various statutory instruments. There is a glaring disparity in the conditions of service between the higher and the lower bench and this state of affairs does negatively affect the operations of the Judiciary and leads to a demotivated workforce.

Given the forgoing, it is strongly advisable that the executive through the treasury give the Judiciary adequate financial resources for it to operate properly and effectively as an autonomous institution. The executive should also give the judiciary financial autonomy and be allowed to manage its payroll. Salaries and other conditions of service for the lower bench and other judicial officers should be improved every time the conditions of service for the higher bench are improved. This in turn will enable the judiciary to operate effectively and efficiently to the advantage of the Zambian people whom it serves.

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First and foremost, I thank my Lord God Almighty for having seen me through and brought me thus far. Many were the trials, but he is always faithful. Romans 8: 28.

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To my husband for all the confidence, love and support you have given throughout my studies.

To my precious sons: Chiwemi, Tolani and Talumba Chinji, who had to endure prolonged periods of my absence and inattention for the past five years, while I pursued my law studies; you gave me the reason to go on, thank you so much for being the light in my life, I love you. To all my siblings, Nephews and Nieces, thank you for the support and encouragement through it all.

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TABLE OF STATUTES

Constitution of Zambia, Chapter 1 of the Laws of Zambia

Judicial Service Commission Act, Chapter 259 of the Laws of Zambia

Judicial (Code of Conduct) Act No. 17, 2008

Judicature Administration Act, Chapter 24 of the Laws of Zambia

Judges (Conditions of Service) Act 1996, Chapter 277 of the Laws of Zambia

Judicial Service Commission Act Chapter 259 of the Laws of Zambia

Table of Contents

Title	Page
Cover Page.....	i
Dedication.....	ii
Recommendation.....	iv
Declaration.....	v
Acknowledgments	vi
Table of Statutes	viii
Table of Contents	ix
List of Acronyms	xii
 CHAPTER ONE	 1
GENERAL INTRODUCTION	1
1.0. Introduction	1
2.0. Statement of the Problem	5
3.0. Purpose of the study.....	6
3.1. Objectives of the Study	6
3.2. Hypothesis	6
3.3. Research Question	6
4.0. Significance of the Study	7
 CHAPTER TWO	 8
THE ROLE OF THE JUDICIARY IN THE ADMINISTRATION OF JUSTICE AND JUDICIAL INDEPENDENCE	8
2.0. Introduction	8
2.1. The role of the Judiciary in Zambia	8
2.2. Judicial Independence	9
2.3. Judicial Accountability	10
2.4. Legal and Institutional Framework of the Zambian Judiciary	11
2.4.1. Legal Framework	11

(i)	Judges Conditions of Service Act, 1996 (CAP) 277	12
(ii)	Judicial Administration Act (CAP) 24	12
(iii)	The Judicial (Code of Conduct Amendment) Act, No. 17 of 2008	13
2.4.2.	Institutional Framework	13
(i)	Judicial Complaints Authority (JCA).....	13
(ii)	Judicial Service Commission	14

CHAPTER THREE	17
3.0. Research Methodology	17
3.1. Importance of a financially sound Judiciary	18
3.2. Judges Salaries, Conditions of Service and Access to Justice	18
3.3. Existing Salaries/Salary Structure for Higher and lower Bench	21
3.4. Impact of the discrepancy in the salaries and conditions of service for the Higher and Lower Bench	24

CHAPTER FOUR	25
IMPROVEMENT OF SALARIES AND CONDITIONS OF SERVICE FOR JUDGES, MAGISTRATES, OTHER JUDICIAL OFFICER AND A WELL PAID JUDICIARY AS A WAY OF COMBATING CORRUPTION	25
4.0. Introduction	25
4.1. Judges Salaries and Conditions of Service	26
4.2. Salaries and Conditions of Service for Magistrates and other Judicial Staff	26
4.3. Corruption in the Judiciary and its effects	27
4.4. Ways of Combating Corruption in the Judiciary	30
4.4.1. Institutional Strengthening	30
4.4.2. Structural changes to enhance independence and accountability.....	32

4.4.3. Judicial Appointments, Discipline, Transfer and Promotion	
Procedures	34
4.4.4. Providing Adequate Resource	34
4.5. Conclusion	38
 CHAPTER FIVE	 40
GENERAL CONCLUSION AND RECOMMENDATIONS	40
5.0. Conclusions	40
5.1. Recommendations	43
BIBLIOGRAPHY	48

Annex

Interview Semi- Structured Questionnaire.....	51
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LIST OF ACRONYMS

ACC	Anti-Corruption Commission
ATJ	Access to Justice
CA	Chief Administrator
GS	Governance Secretariat
HC	High Court for Zambia
HRC	Human Rights Commission
JCA	Judicial Complaints Commission
JSC	Judicial Service Commission
LAZ	Law Association of Zambia
MOJ	Ministry of Justice
SCZ	Supreme Court for Zambia
SI	Statutory Instrument
TIZ	Transparency International
ZLJ	Zambia Law Journal
ZPS	Zambia Prisons Service

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

The Judiciary is one of the three arms of Government, others being the Executive and the Legislature. The ordinary meaning of the word judiciary is simply, the Judges of a country collectively. It also refers to the system of law courts in a country. This is how the concept is understood in common parlance¹. The judiciary is found in every district i.e. there is a magistrate's court and local courts in every district. For ease of reference, it is divided into four categories.

The first one is the upper bench. This comprises the Supreme Court, High Court and Industrial Relations Court and people who serve in these courts are Constitutional office holders. They are appointed under article 93 and 95 of the Constitution.

The second category is the lower bench which consists of the Magistrates and Local Courts.

The third category is the management which is headed by the Chief Administrator. According to section 3 of the Judicature Administration Act², the Chief Administrator is responsible for the day-to-day administration of the Judicature.

The fourth category is unionized staff. The second, third and fourth categories are civil servants.

In the Zambian context, Article 91 of the Constitution of Zambia³, however employs the term Judicature which has a similar meaning namely the judges and courts, that is to say, the Supreme Court, High Court, Subordinate Court, Industrial Relations Court, Local Court and such lower Courts as may be prescribed by an act of parliament.

Article 91(2) and 91(3) of the Constitution of Zambia states as follows:

(2) The Judges, members, magistrates and justices, as the case may be, of the courts mentioned in clause (1) shall be independent, impartial and subject only to the Constitution

¹George Kunda, "The Zambian Judiciary in the 21st Century" Zambia Law Journal Volume 30 (1998), 21.

² Chapter 24 of the Laws of Zambia

³ Chapter 1 of the Laws of Zambia

and the law and shall conduct themselves in accordance with a code of conduct promulgated by parliament.

(3) The judicature shall be autonomous and shall be administered in accordance with the provisions of Parliament.

It is not in dispute that the Judiciary being one of the three arms of Government is involved in governance, therefore the Judiciary as part of Government should be involved in securing to persons in Zambia social, economic, and political justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity, the dignity of the individual, and the unity and integrity of the nation⁴. Therefore effective prosecution of cases cannot be achieved without an effective and competent judicial system that functions efficiently, independently and impartially⁵. Therefore the public expects a lot from the judiciary. However the need for the judiciary to command respect cannot be over-emphasized and members of the public have to run to the judiciary for resolution of serious disputes.

It is important to note that no discussion about the judiciary can be complete without a reference to its independence. When the judiciary is not independent, the executive or legislative branches of Government exert various forms of pressure to influence the outcome of justice processes, using threats, intimations, bribery but also the manipulation of judicial appointments, salaries and conditions of service.

It is universally accepted that to be independent of the executive, a judge must be secure from the risk of dismissal by the Government of the day. His or her salary and other conditions of service should also be safeguarded⁶.

It would appear that in Zambia there are adequate provisions in the constitution and other Acts of parliament which should ensure the independence of the judiciary and an efficient court system manned by contended judges, magistrates, justices and judicial staff. Although reference is to the independence of the judiciary which comprises the magistrates and local court magistrates, their

⁴ Kunda, "The Zambian Judiciary," 30.

⁵ Marie Chene, "Supporting Zambian Judicial Capacity to Handle Corruption Cases," U4 Export Answer, (Anti-Corruption Resources Centre, 2008), 1.

⁶Kunda, "The Zambian Judiciary," 33.

independence is not adequately addressed unlike that of the judges. To start with, the Constitution of Zambia in Article 91 as already stated provides for an independent, impartial and autonomous judiciary. The appointment of Supreme Court and high court judge is in accordance to international norms, which is to say by the president, subject to ratification by the National Assembly⁷.

The Chairman and Deputy Chairman of the Industrial Relations Court are also appointed by the President on advice of the Judicial Service Commission, although no ratification of the National Assembly is necessary in respect of these appointments. Judges of the Supreme Court and High Court, and the Chairman and Deputy Chairman of the Industrial Relations Court, are all protected and can only be removed after formal proceedings before a tribunal. Appointment of magistrates and local court justices by the Judicial Service Commission is also a satisfactory and acceptable mode of appointment. Acts of Parliament have been enacted to strengthen the independence and autonomy of the Judiciary, e.g. the Judicature Administration Act, No. 42 of 1994 and the Judges Conditions of Service Act, No. 14 of 1996 are relevant in this context. The Judges (Conditions of Service) Act⁸ provides for the Judges 'conditions of service, including emoluments and pensions. However, this piece of legislation requires the President by statutory instruments to prescribe the emoluments.

From the above one could easily see that a lot of effort is put in, to improve the conditions of service for judges and little is done to improve salaries and conditions of service for magistrates, local court magistrates and administrative staff in the judiciary and yet it is indisputable that all these officers are involved in the dispensation of justice. This is further evidenced by the passing of a number of Statutory Instruments in relation to improvement of salaries and conditions of service for judges only.

The latest statutory instrument to this effect is the S.I No 61 of 2010 which came into effect on 1st April 2010 and amended salaries and conditions of service for judges up to 31st March 2012.

It is not in dispute that Judges and lawyers or the entire legal profession should continue to fight for better conditions for judges, after all, being a judge is the pinnacle of the legal profession and

⁷Kunda, "The Zambian Judiciary," 42.

⁸ Chapter 277 of the Laws of Zambia.

lawyers should look forward to becoming judges one day. Besides, the idea of subjecting judges to heavy dependence on the Government for their survival and cutting down on their entitlements and conditions in the name of cost saving could breed a cadre of disgruntled judges⁹. However, in as much as we appreciate that judges must be well looked after now and in future for them to dispense justice in a contented and efficient manner, magistrates and other judicial personnel must also be properly remunerated if justice is to be dispensed in an efficient and effective manner.

It is therefore clear from the enactment of various legislation on the improvement of salaries and conditions of service that, focus is only to the higher bench as salaries and conditions of service for other judicial officers are only dependent on increment of salaries for the civil service which are negotiated by their unions and yet magistrates and other judicial workers do not belong to any union. Low salaries for the other staff has led to magistrates and local court justices in the past to go on strikes, and this does not augur well for the maintenance of law and order and prevention of anarchy in the country.

In support of this, various sectors of society including government, human rights report, and non-governmental organizations have lamented the poor delivery of justice in Zambia.

This also prompted the creation of the Access to Justice Programme in the Ministry of Justice whose mandate among other things is to work with other governance institutions like the judiciary, police, anti-corruption commission, legal aid board, department of public prosecution, etc, so as to develop a sector wide approach in dealing with the justice sector in Zambia.¹⁰

The reality on the ground is that despite the improvement of salaries and conditions of service for judges, there hasn't been much positive impact as regards to access to justice and delivery of efficient and effective legal services, as this is evidenced by among other things congestions in prisons due to delayed litigation, corruption, demotivated workforce etc.

Therefore, despite the improvement of judge's salaries and conditions of service by Statutory Instrument No 61 of 2010, there remains much to do in order to record significant progress with

⁹ Kunda, "The Zambian Judiciary," 44.

¹⁰ Interview with employee at the Governance Secretariat at Ministry of Justice

regards to efficient and effective delivery of legal services and Access to Justice by the Zambian masses.

2.0. Statement of the problem

Various statutory instruments and amendments to the principle Act, namely S.I No 140 of 1996, No 67 of 1997, No 6 of 2003, No 55 of 2005, No 58 of 2007, Act No. 19 of 1998, Act No. 15 of 2006 and the latest being Statutory instrument No.61 of 2010, which are promulgated pursuant to the judges salaries and conditions of service, show that great effort is been made by the Government to improve salaries and conditions of service for judges only. The absence of legislation with regards to the lower bench and administrative staff in the judiciary in respect to salaries and conditions of service clearly shows that no much effort is put in to improving salaries and conditions of service for other judicial officers. This is despite the fact that most, if not all employees in the judiciary are in one way or the other involved in the delivery of legal services and besides, it is a well known fact that a lot of Zambians access justice through the lower court vis a vis magistrate courts and local courts.

As I have already alluded to the fact that conditions of service for magistrates, local court magistrates and the administrative staff at the judiciary are in line with what is prevailing in the general civil service. Magistrates though not unionized, only benefit salary increments from the negotiations by the civil service unions with government. Increments of their salaries are based on the percentage awarded to the civil servants annually.

This has led to a demotivated workforce especially at the level of magistrates, local court magistrates and support staff who comprise the majority of the judiciary operations.

It remains much to be seen therefore whether review of Judges Salaries and conditions of service only is the key to improve access to justice and efficient and effective delivery of legal services or whether more should be done in terms of implementation of statutory systems for review of salaries and conditions of service for the other members of the judicature or rather the judiciary at large.

Focus is hereby drawn to the impact of Statutory Instrument No. 61 of 2010 in terms of the efficacy of improved judge's salaries and conditions of service and its impact on access to justice

and delivery of legal services in Zambia, whilst majority of Judiciary employees remain poor salaries and Conditions of service.

3.0. Purpose of the Study

This study sought to conduct an analysis and impact of Statutory Instrument No 61 of 2010 on access and administration of justice with a view to point out other areas of improvement in the enhancement of efficient and effective dispensation of justice. The study focused more on the judiciary as one of the access to justice institution for the purpose of the study.

3.1. Objectives of the Study

- 3.1.1. To assess the impact of S.I No 61 of 2010 and past Statutory Instruments on the efficiency and effectiveness of delivery of legal services and access to justice.
- 3.1.2. To highlight other improvements besides judges salaries and conditions of service as a way to improve delivery of justice for the benefit of the Zambian population.
- 3.1.3. To highlight the inadequacies exposed by Statutory Instrument No. 61 of 2010 with regards to magistrates, local court magistrate and other Administrative staff of the judiciary's salaries and conditions of service due to the fact that all these staff are involved in the delivery of justice.

3.2. Hypotheses

- 3.2.1. Improving judge's salaries and conditions of service almost every year as is the case does nothing to motivate other officers in the lower courts and administrative staff and this has a negative effect on the delivery of legal services and access to justice.
- 3.2.2. Justice delays at all levels have been worsening despite improvement in salaries and conditions of service for judges.

3.3. Research Question

Does the improvement of salaries and conditions of service for judges only improve the efficient and effective delivery of legal services in the judiciary as an institution involved in Access to justice?

4.0. Significance of the Study

The need for an efficient and effective judicial system cannot be over emphasized. It is not farfetched to claim that government has in the past years improved salaries and conditions of service for judges nearly on a yearly basis and salaries of other employees of the judiciary have not proportionally been increased and despite the promulgation of these Statutory Instruments the latest being S.I No 61 Of 2010 there hasn't been much improvement in the efficiency, and effectiveness of the delivery of legal services in the judiciary, mainly because these other employees have not been motivated as regard to their salaries and conditions of service despite them also being key staff involved in delivery legal service.

The significance of the paper therefore is that it endeavored to highlight that improving salaries and conditions of service for members of the higher bench only does not in any way help the judiciary as a whole to deliver efficient and effective legal services to the Zambian people. It is therefore advisable that policy makers should not only focus on one area of the judiciary when it comes to improving salaries and conditions of service, but should legislate laws which will take into consideration salaries and conditions of service for magistrates and other administrative staff in the judiciary. This will help them find a permanent solution to some of the many challenges faced by the judiciary as a whole.

CHAPTER TWO

THE ROLE OF JUDICIARY IN THE ADMINISTRATION OF JUSTICE AND JUDICIAL INDEPENDENCE

2.0. Introduction

This chapter talks about the role of the judiciary in the administration of justice in Zambia. It will further address the doctrine of judicial independence and accountability and the importance of these two doctrines in enhancement of service delivery by the judiciary.

The judiciary is one of the three arms of Government. The ordinary meaning of the word judiciary is simply, the judges of a country collectively. It also refers to the system of law courts in the country. In other words, the judiciary is involved in governance.

The notion of judicial independence and judicial accountability can be said to be fundamental to the fulfillment of the mandate of any judicial system as arbiter of the last resort, protector of the rights of citizens and custodian of the rule of law. The two principles are fundamental to good governance in democratic societies.¹¹

2.1. The role of the judiciary in Zambia

Administration of justice is the primary function of the judiciary. However, the Judiciary performs certain other judicial functions.

The judiciary as part of the government should be involved in securing to persons in Zambia social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity, the dignity of individual, and the unity and integrity of the nation. All in all the judiciary is involved in the dispensation of justice.¹²

¹¹ David Simmons, "Aspects of Judicial Independence and Accountability: Lessons for the Commonwealth Caribbean" Commonwealth Law Bulletin Volume 33 No.4 (2007)

¹² Kunda, "The Zambian Judiciary," 30.

From the above it is evident that the public expects a lot from the judiciary. Therefore, the need for the judiciary to command respect cannot be over-emphasized. Members of the public have to run to the judiciary for resolution of serious disputes.¹³ It is important to stress also that the judiciary is not only the last hope of common man: it is the only hope of all men and women, rich or poor who are bound by a common destiny. Modern democratic society as we know it today will cease to exist where confidence is lost in the judicial system and no one wants to return to those dark days of autocracy and dictatorships.¹⁴

2.2. Judicial Independence

No discussion about the judiciary can be complete without a reference to its independence. However the two concepts of independence and autonomy are interrelated. The autonomy of the judiciary is supposed to strengthen its independence.¹⁵

Essentially judicial independence requires that a country's judicial system be insulated from external influence either from Government sources such as legislative, executive, or administrative authorities or from private interests attempting to exert economic, social, ethnic or religious pressure on judges¹⁶. It is therefore an important principle that means a judge make a fair and impartial decision based solely on the facts presented and the without yielding to political pressure or intimidation.

Judicial independence comes in two varieties:

- a) Institutional Independence
- b) Decisional Independence

¹³ Kunda, "The Zambian Judiciary," 33.

¹⁴ Ikechukwa N, "Corruption in Judiciary: CJN, NBA to the rescue", <http://www.vanguardngr.com>. (Accessed October 13, 2011).

¹⁵ Kunda, "The Zambian Judiciary," 30.

¹⁶ Alemika Ettambi, "Judicial System in Sierra Leon, Tanzania and Zambia" Institute for Security Studies Policy brief No 15, Oct 2009, [http://: www.issafrica.org](http://www.issafrica.org). (Accessed December 16, 2011).

“Institutional independence” refers to the situation where the separation of powers between the three branches of government (judicial, executive and legislative) is successful at keeping the executive and legislative branch out of the affairs of the courts.

“Decisional independence” refers to an idea whereby judicial decision-making is able to exist free of undue influence from outside agents who are acting from partisan or special-interest motivations, rather than being motivated by the demands and ideals of justice.¹⁷

The extent of judicial independence can be determined by a number of features which include inter alia; the method of appointment of judges, remuneration and other conditions of service and whether the judiciary has exclusive jurisdiction over judicial matters.¹⁸ Therefore, judicial independence in general entails that the public must feel confident in the integrity and impartiality of the judiciary. In this way judicial independence serves to protect the constitutional rights of citizens and the rule of law and ultimately independent courts guarantees that judges follow the rule of law, the foundation of the society and in this way will protect the rights of the powerless.

Therefore, the judiciary needs to be independent of outside influence, particularly from political and economic powers. But judicial independence does not mean that judges and court officials should have free rein to behave as they please. Indeed, judicial independence is founded on public trust, and to maintain it, judges must uphold the highest standards of integrity.

2.3 Judicial Accountability

In everyday terms accountability is simply the ability to hold an individual or institution responsible for its actions. Article 91 (2) of the constitution,¹⁹ provides that Judges, Magistrates and Justices shall be independent, impartial and subject only to the constitution and the law. Further that they shall conduct themselves in accordance with the code of conduct promulgated by parliament. Judicial accountability entails that judicial officers are transparent and answerable in the exercise of their judicial functions to the public in general and judicial supervising bodies,

¹⁷ Tulanelink, “Judicial independence and accountability”

http://judgepedia.org/index.php/judicial_independence_and_accountability (Accessed February 8, 2012).

¹⁸ Love more Madhuka, “Constitutional protection of the independence of the judiciary: A survey of the position in South Africa” *Journal of African Law* 46(2002), 232-245.

¹⁹ Constitution of Zambia, Chapter 1 of the Laws of Zambia

as a measure to check abuse of judicial powers legally bestowed on them.²⁰ Judicial officer as defined under the judicial (Code of Conduct) Act (1999), means the Chief Justice, the Deputy Chief Justice, a Judge, Magistrate, Registrar, Local Court Justice and Justice of a Court or other person having power to hold or exercise the judicial power of a court. The Judiciary, like other branches of Government, must be accountable directly or indirectly to the general public it serves. Therefore, holding the judiciary accountable to an external body raises questions as to whether that same process could be used to undermine judicial independence.²¹

It may be said that judicial independence and accountability cannot co-exist as they are in direct opposition, to the contrary the two principles must work in complement and a necessary balance needs to be struck for the ends of justice to be achieved. This can best be achieved where rules are in place to uphold judicial ethics and those rules are visible to the public.²²

Judicial independence and judicial accountability are non-identical Siamese twins, joined at the heart, needing each other to survive. Judges who are not independent in fact, who have, for example, too close a relation with political leaders, lose the public trust, and rightly so. On the other hand, judges who are so independent that they stop being accountable, also lose the public trust, and rightly so.

In conclusion, judicial independence and judicial accountability must be sufficiently balanced so as to strengthen judicial integrity for effective judicial impartiality.

2.4. Legal and Institutional Framework of the Zambian Judiciary

2.4.1 Legal Framework

Article 91 of the Zambian Constitution²³ establishes the judicature.

²⁰ Judicial Accountability Mechanisms, "A resource document – produced by The Political Information and Monitoring Service (PIMS) at the Institute for Democracy" South Africa, IDASA, 2007.

²¹ Greg Mayne, *Judicial Integrity: The accountability gap and the Bangalore Principles. Global Corruption Report, Transparency International* (New York: Cambridge University Press, 2007), 40.

²² Judicial Accountability Mechanisms, "A resource document – produced by The Political Information and Monitoring Service (PIMS) at the Institute for Democracy" South Africa, IDASA, 2007.

²³ Constitution of Zambia, Chapter 1 of the Laws of Zambia.

The judicature consists of the Supreme Court, the High Court, the Industrial Relations Court, the Subordinate Courts, the Local Court and such lower courts as may be prescribed by an Act of Parliament. Operations and function of the judicature are governed by various statutes.

i. Judges Conditions of Service Act 1996 (CAP) 277

This is an Act to provide for the emoluments, pensions and other conditions of service for Judges and to provide for matters connected with or incidental to the forgoing. For the purposes of this Act, ‘ Judge’ means a Judge of the Supreme Court, a puisne Judge, and the Chairman and Deputy Chairman of the Industrial Relations Court. Section 3 provides that ; “there shall be paid to a Judge such emoluments as the president may, by Statutory instrument, prescribe” and section 12 (1) states that “the president may, by statutory instrument, make Regulations for the better carrying out of the provisions of this Act.”

From the above provisions, it is observed that by implication the independence again is undermined due to the excessive powers of the president which is as a result of lack of separation of powers between the executive and the judicature.

ii. Judicature Administration Act (CAP) 24

The Act provides for the administration of the courts; to confer on the Judicial Service Commission (JSC) power to appoint staff of the Judicature; and to provide for matters connected with or incidental to the foregoing. “Judicature” is defined in the Act to mean the Supreme Court, the High Court, the Industrial Relations Court, the Subordinate Courts, Local Courts and any other courts established by an Act of Parliament.

As already alluded to the fact that judicial independence is one of the cornerstone of any democratic society, it has been observed that the Act in question does to some extent confer some level of independence to the judiciary, though one would say there are still certain threats to the independence.

The Chief Administrator who is in charge of the day to day administration of the Judicature and for the implementation of resolutions of the Judicial Service Commission in respect of the administration is according to section 3(1) of the Act appointed by the president, and shall hold office on such terms and conditions as the commission may determine, with the approval of the president. Therefore from the above, the executive through the President has the final say.

iii. The Judicial (Code of Conduct Amendment) Act, No. 17 of 2008

The above mentioned Act stems from the amendments to the Judicial (Code of Conduct) Act No.13 of 2006 and Judicial (Code of Conduct) Act, No. 13 of 1996. The Judicial (Code of Conduct) Act No.17 of 2008 is promulgated by Parliament pursuant to Article 91 clause 2 of the Constitution of Zambia and its principle purpose is to provide for the regulation of conduct of judicial officers in the exercise of their judicial functions.

The Act provides for the conduct for officers of the judiciary and establishes the Judicial Complaints Authority whose mandate is to investigate allegations of misconduct against judicial officers

2.4.2 Institutional Framework

i. Judicial Complaints Authority (JCA)

The Judicial Complaints Authority is a government institution established in 2002 by the Judicial (Code of Conduct) Act No.13 of 1999 as amended by the Judicial (Code of Conduct) Act No.13 of 2006 and the Judicial (Code of Conduct) Act No.17 of 2008. The Code Conduct is promulgated by parliament pursuant to Article 91 clause 2 of the Constitution of Zambia.

Its main mandate is to investigate allegations of misconduct against judicial officers.²⁴ The objective is to promote professional conduct, competence and integrity amongst the officers of the judiciary in the performance of their adjudicative duties so as to enhance public confidence in the Zambian judiciary.

²⁴ Zambia National Anti Corruption Policy, 2009.

The main functions of the Authority is to receive complaints and allegations of misconduct and to investigate them and also to submit its findings and any recommendations made to either the appropriate Authority for disciplinary actions or any other administrative action it may see fit.

ii. Judicial Service Commission (JSC)

Article 91(3) of the Constitution²⁵ states that, the Judicial Service Commission is a constituent of the Judiciary through which the Judiciary operates as an autonomous institution. It is established by reference to the Constitution under part 1V and the Judicial Service Commission Act. The Chief Justice is the Chairperson of the Commission which is comprised of the Chairman of the Public Service Commission, the Secretary to the Cabinet, a Supreme Court Judge nominated by the Chief Justice, the Solicitor General, the Attorney General, a member of parliament appointed by the Speaker of the National Assembly, Dean of the Law School and President of the Law Association of Zambia.

However certain limitations and challenges were observed. The Judicial (Code of Conduct) has its own limitations in that it does not provide for punitive powers to Complaints Authority. All it does is to recommend to the relevant authority, in this case the Judicial Service Commission or the Director of Public Prosecution for possible criminal proceedings. Therefore it's not farfetched to say that its powers are limited to the effect that it is excluded from applying punitive measures to the offending judicial officer.

The other challenge is that of remuneration in that the remuneration of the secretary and Authority staff according to the enabling Act are subject to approval of the minister rather than an independent body.

Further, In order for the judiciary to enjoy its independence and to operate efficiently and effectively, it is supposed to be funded adequately and should be properly equipped in terms of human and material resources. However according to section 6 (1) of the

²⁵ Chapter 1 of the laws of Zambia

Judicature Administration Act, the funds of the Judicature shall consist of such moneys as may be appropriated by parliament for the purposes of the Judicature. It is not in dispute however that the Judiciary is poorly funded.

Conditions of service for Judges including remuneration are governed by the Judges (Conditions of Service) Act, 1996²⁶, and section 1(1) states that the Act may come into force as the president may, by statutory instrument, appoint. Section 12(1) states that the President may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act. This implies that conditions of service are determined or controlled unilaterally by the president as opposed to an independent body. Again this is not in line with championing of judicial independence.

It is important to note that the current constitution is silent as regards any aspect to judge's remuneration. However efforts have been made to strengthen the independence of the judiciary though this has not yielded the desired results. For instance the 1995 draft Constitution by the Constitution Review Commission in Part XI article 219(1) proposed that the Judicial Service Commission shall review and submit recommendations for the emoluments and other conditions of service of judges to the Emoluments Commission. (2) The Emoluments Commission shall review recommendations from the Judicial Service Commission and make appropriate recommendations for the emoluments of Judges for ratification by the National Assembly. (3) The National Assembly shall enact legislation providing for the emoluments and the other terms and conditions of service for Judges, taking into consideration the recommendations of the Emoluments Commission.

From the above it is not in dispute that the independence of the Judiciary may be enhanced in that there is no role played by the executive as regard salaries and conditions of service for judges unlike the current scenario where the salaries and conditions of service are promulgated through statutory instruments signed by the President.

Further, the Constitution of Zambia (Amendment) Bill, 2010 in Part VI article 128 (1) recommended that the Judicial Service Commission shall review and submit recommendations for the emoluments and other conditions of service of Judges to the

²⁶ Chapter 277 of the laws of Zambia.

Minister responsible for finance. (2) Parliament shall enact legislation to provide for the emoluments and other terms and conditions of service for Judges, taking into consideration the recommendations of the Minister responsible for finance.

Again it is evident that the intention of the above provision was to enhance the independence of the Judiciary in that the executive may not have an influence on the review of salaries and conditions of service for Judges.

In conclusion, judicial independence and judicial accountability must be sufficiently balanced so as to strengthen judicial integrity for effective judicial impartiality. The independence of the judiciary therefore must not only be constitutionally protected, it must also capture and maintain the confidence of the public it seeks to protect. Loss of confidence in the judicial system due to perceptions of a lack of independence and impartiality is extremely damaging to the effective working of the justice system. With this in mind the judiciary needs to be held in respect by the general public and indeed by the legislature and the executive if it is to function adequately. That respect however cannot be demanded, but must be earned.

CHAPTER THREE

3.0. Research Methodology

The study was primarily qualitative; therefore data was collected through principally secondary sources and primary sources. Secondary sources included legislation, literal works, journals, internet and relevant documentation on the subject matter using a desk study approach.

Data was collected through academic visits to relevant institutions such as the Judiciary, Governance Secretariat in the Ministry of Justice, Judicial Service Commission, the Zambian Prisons Service and Transparency International Zambia to observe and get first hand information on the subject. Data collection involved a desk research of the pertinent documents with respect to salaries and conditions of service for judges and other judicial officers. Interviews were conducted with officers from the High Court, Magistrate courts and various institutions with an effort to collect data.

The researcher overcame many challenges to complete the study. First and foremost there is inadequate literature available on the subject with regards to previous works by past students. Secondly official documents from government departments were difficult to obtain due to the sensitive nature of the subject. This is because officials were reluctant and skeptical to release information to the public and also lack of trust that the researcher might disclose the source of information. The other constraint was limited time for the conduct of the research. Despite these challenges, the research was still possible as the researcher was only delayed but not prevented from achieving the objectives of the study even; though under difficult circumstances.

3.1. Importance of a Financially Sound Judiciary

The judiciary must be granted the financial and human resources to perform its functions adequately. In most developing countries e.g. Zambia 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. 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, computers, internet and legal materials. This situation hampers the efficiency of court personnel, creating considerable backlogs of cases.

This situation not only disadvantages the judicial staff but more importantly the general public which it intends to serve due to delayed disposal of cases rather access to justice will be undermined. Lack of access to justice is a defining attribute of poverty, and impediment to poverty eradication. Therefore the status and remuneration of specialized staff like judicial officers has to be adequate to attract and retain the right set of skills and expertise. Besides a well functioning justice sector is no doubt a precondition to spur economic growth. Access to justice is simply not only a mechanism to foster economic growth but more importantly a means to prevent and overcome human poverty, by strengthening disadvantaged people's choices to seek and obtain a remedy for grievances.

With this in mind reforms in developing countries like Zambia should focus on raising salaries and providing safeguards to avoid potential manipulation of salaries, promotions and working conditions by members of the executives.

3.2. Judges Salaries, Conditions of Service and Access to Justice

Access to justice in real terms must be assessed on different levels, including:

- Effectiveness and efficiency of justice delivery agencies – this relates to the capacity of the agencies to deliver quality services within a reasonable period of time.
- Physical access – how close the users are to law enforcement agencies

- Access in financial terms – how affordable legal services are to the users
- Access in technical terms – how comfortable users are with the legal language and procedural requirements. This also relates to the treatment of users by the law enforcement personnel as well as their representation by expert in and its techniques and their ability to afford them, i.e. cost.²⁷

It is no doubt that for the justice delivery agencies e.g. the judiciary to deliver effectively and efficiently, there is need to strengthen it financially. The financial support to the judiciary also covers improving salaries and conditions of service for judicial staff.

In Zambia however, focus in terms of improving salaries and conditions of service have mainly been on the higher bench and not on all judicial staff who are involved in the dispensation of justice. This is evidenced by a number of Statutory Instruments promulgated in relation to the improvement of salaries and conditions of service for the higher bench only.

Some of the conditions of service which apply to judges only and not to other judicial officers can be traced from the following statutory instruments promulgated from 1996 to date.

3.2.1 Statutory Instrument No. 140 of 1996

A salary, allowance (which comprise of a non-private practicing allowance, imprest when travelling on duty, fuel allowance), rent – free fully furnished residence and shall be entitled to purchase the furniture at depreciated book value on vacating office.

Where a judge lives in the Judge's own house, the Government shall pay municipal rates or that house. Security guard based at the judge's residence twenty four hours, personal workers, business class air travel when travelling on duty, a diplomatic passport, personal to holder vehicle and a driver, Government to pay telephone bills to judges for local calls and for international calls, if such international calls are official, and medical treatment to a judge, the spouse and children at Government expense where such treatment is to be undertaken abroad after due approval of the ministry responsible for health.

3.2.2 Statutory Instrument No. 67 of 1997

²⁷ General Mybanga Kondolo, (Paper presented at the Law Association of Zambia stakeholders – seminar programme, Fringilla Lodge Chisamba, Zambia, April 26, 2004).

This Amendment Regulation of 1997 basically increased salaries for the all the judges of the higher bench.

3.2.3 Statutory Instrument No. 6 of 2003

The above mentioned Amendment Regulation of 2003 improved judges conditions of service by stating that where a judge provides own accommodation, the Government shall pay the Judge housing allowance at the rate of one hundred per cent of the Judge's basic salary.

3.2.4 Statutory Instrument No. 55 of 2005

This Amendment Regulation of 2005 increased salaries for all the judges of the higher bench.

3.2.5 Act No. 15 of 2006

This Amendment Act improves judges condition of service by improving the gratuity payable to Judges and states that if a Judge has served –

For a period five years or less, they be entitled to a gratuity comprising ten months of the emoluments last received while in office, for a period of six to ten years, they be entitled to a gratuity comprising fifteen months of the emoluments last received while in office, for a period of eleven to fifteen years, they be entitled to gratuity comprising twenty- five months of the emoluments last received while in office, for a period of sixteen to nineteen years, be entitled to a gratuity comprising forty months of the emoluments last received while in office; and for a period of twenty years or more, they be entitled to a gratuity comprising sixty months of the emoluments last received while in office.

3.2.6 Statutory Instrument No. 58 of 2007

This Amendment Regulation of 2007 increased salaries for all the judges of the higher bench.

3.2.7 Statutory Instrument No. 61 of 2010

The above mentioned Amendment regulation improves salaries for judges for the period 1st April 2010 to 31st March 2011 and again improves the salaries applicable to the judges for the period 1st April 2011 to 31st March 2012.

From the above listed amendments, it is not in dispute that salaries and conditions of service for judges have from time to time been improved. It is however a notorious fact that salaries for judicial staff in the lower bench visa vis magistrates have remained unadjusted for a long time. The only time they benefit from an increment is when salaries for civil servants are increased.

3.3. Existing Salaries/Salary Structure for both the Higher and Lower Bench.

In the year 2010 when statutory instrument no 61 was promulgated, the basic pay for the lowest paid officer at the higher bench was K6, 463,607 and the basic pay for the lowest paid officer at the lower bench was K1, 578,903.

3.3.1 Existing salary structures for the higher bench.

This is comprised of the following –

- a) Non private practice allowance which is fixed depending on the scale of the officer.
- b) A non taxable allowance of 20% of the basic pay
- c) Housing allowance at 100% of the basic pay
- d) Electricity allowance
- e) Water allowance
- f) Fuel allowance

Other conditions of service applicable to the members of the higher Bench are as follows –

a) Domestic Servant

The supreme and high court judges are all entitled to one cook, one house servant, and one gardener

b) Diplomatic Passport

Judicial officers of the higher bench are all entitled to diplomatic passports

c) Travel on Duty

When travelling on duty by air, Judges Entitlements are as follows:

- (i) Business class travel for all the Judges
- (ii) When a Judge is travels by road, he/she is entitled to travel in a chauffeur driven official motor.

d) Official Motor Vehicle

Every judge is entitled to a personal-to-holder motor vehicle and a driver. The motor vehicle is maintained by the judiciary. It is replaced by Government. And on retirement, or on replacement, the Judge is entitled to purchase the motor vehicle. If a Judge dies before retirement, the spouse of that Judge is entitled to purchase the vehicle.

e) Domestic Furniture

Every Judge is entitled to domestic furniture and to purchase it at book value on vacating office.

f) Security

Every Judge is entitled to armed guard, twenty four hours (24) based at his or residence.

g) Medical

A Judge, their spouse and children are entitled to medical treatment at Government expense, where such treatment is to be undertaken abroad, it should be subject to approval by the Ministry of health

h) Loans for Judges

A Judge is entitled to the following –

- (i) Car loan equivalent to five times the Judge's basic salary or the cost of car, whichever is lower
- (ii) House loan equivalent to ten times the Judge's basic salary or the cost of the house, whichever is lower
- (iii) Household loan equivalent to five times the Judge's basic salary or cost of household items, whichever is lower.

- (iv) Five percent (5%) interest is charged on the three loans. Under ordinary circumstances, a car loan is paid back within five years. A household and housing loan is recoverable within ten years.

3.3.2 Existing salary structures for the lower bench.

This is comprised the following -

- a) A non private practice allowance which is fixed depending on the scale of the officer and is only applicable from the Registrar (Director, Court Operations) up to the Resident Magistrate and is not applicable from the Magistrate Class 1 to the Local Court Magistrate
- b) Responsibility allowance applicable to Magistrate Class I to Class III only
- c) Recruitment and retention allowance at 20% of the basic pay and this is applicable to the Deputy Director of the Local courts and from the Chief local courts officer to the local court officer only
- d) Housing allowance which is applicable to everyone and is dependent on the salary scale

Other conditions of service applicable to the members of the lower bench are as follows –

a) **Accommodation**

Where there are institutional houses, the Subordinate Court Magistrates are accommodated in such houses. Where houses are not available, the Judiciary rents accommodation for them. Where a Magistrate opts to live in his or her own accommodation, then housing allowance is paid depending on the salary scale of the officer.

As with Local Courts Magistrates, they find their own accommodation from the housing they are paid.

The legal basis for the above salaries, salary structure and conditions of service as regards the higher bench is the Judges (Conditions of Service) Act ²⁸ in section 3 and

²⁸ Chapter 277 of the Laws of Zambia

the Statutory Instrument No. 140 of 1996, The Judges (Salaries and Conditions of Service) Regulations, 1996, as last amended by Statutory Instrument No. 61 of 2010.

The legal basis for the salaries, salary structure and conditions of service as regards the lower bench and the supporting staff is the Judicature Administration Act²⁹ in section 6 (3) (c) and (d) as read with section 2.

3.4. Impact of the Discrepancy in the Salaries and Conditions of Service for the Higher and Lower bench.

From the above, it is not in dispute to say there is wide gap between the higher bench and the lower bench as regards salaries and conditions of service for the judicial officers. Judicial officers at the higher bench have far much better conditions of service as compared to the officers at the lower bench. With these conditions applying to the higher bench, it is possible to determine that judicial officers at the higher bench have fewer things to worry about even as they conduct their judicial service. They probably are not worried about transport to and from the office, medical bill when their families need that, rentals for their accommodation, security at their premises and salaries for their domestic servants. This way they are able devote more time to their judicial function knowing that everything is in place. On the other hand, judicial officers at the lower bench have all these to worry about including how to supplement on the existing allowance of accommodation to ensure they meet their monthly obligation. What is needed is an a judicature which is remunerated fairly so as to have a free and settled mind to enable him devote energy and time for the determination of good decisions for the benefit of the litigant.

The impact therefore is a demotivated workforce which spends most of its time trying to find ways and means of supplementing its mega salaries and poor conditions of service. Corruption in such an environment is rife and the end result is that the public loses confidence in the Judiciary and its integrity as a result of this is questionable.

²⁹ Chapter 24 of the Laws of Zambia

CHAPTER FOUR

IMPROVEMENT OF SALARIES AND CONDITIONS OF SERVICE FOR JUDGES, MAGISTRATES, OTHER JUDICIAL OFFICERS AND A WELL PAID JUDICIARY AS A WAY OF COMBATING CORRUPTION

4.0. Introduction

The need for a well funded judiciary cannot be over emphasized in that it lessens its overdependence on the executive but in turn enhances the independence and accountability of the judiciary. A well funded judiciary encompasses among other things competitive salaries and conditions of service for all judicial officers and this in turn enhances a well functioning justice sector which is a precondition to spur economic growth.

A well funded judiciary strengthens judicial integrity and enhances efficiency in combating corruption. The effective prosecution of corruption case cannot be achieved without an effective and competent judicial system that functions efficiently, independently and impartially. Most initiatives supporting judicial capacity to tackle corruption seek to strengthen judicial independence and accountability through transparent appointments, promotion and disciplinary procedures and the introduction of higher ethical and professional standards. In addition, as corruption cases are more likely to be effectively handled by a well –functioning judiciary with adequate resources and capacity, reform programs also address inefficiencies through increased resources and capacity, well-trained judges and more efficient ways of handling cases and managing caseload. Judicial reform must be grounded in a solid empirical basis, tailored to the specific circumstance of the country and locally owned. A holistic approach should be prioritized.³⁰

³⁰ Chene, “ Supporting Zambian Judicial Capacity ,” 1-2.

4.1. Judges Salaries and Conditions of Service

Judges salaries and conditions of service as per previous chapter are statutory and are promulgated through statutory instruments approved by the executive. Their salaries and conditions of service are as evidenced by the previous Statutory Instruments improved almost every year. The latest being Statutory No 61 of 2010 which increased judges salaries and conditions of service for a consecutive two year period ending March 2012. Though one would say judge's salaries and conditions of service in Zambia may not be competitive, it can be argued that there is an effort by the government to try and improve the salaries and conditions of service for the judges.

4.2. Salaries and Conditions of Service for Magistrates and Other Judicial Staff

Salaries and conditions of service for magistrates and other judicial staff are not statutory. They are determined by the public service management division (PSMD) and Minister of Finance and negotiated by the Unions. It is important to note that magistrates do not belong to any union and only benefit from salary increments from unionized civil servants whose salaries are negotiated by their unions. Currently the salaries for magistrates and other judicial staff are too low despite them being part of the judiciary whose role is the same as that of judges.

It is not in dispute that administrative staff in the judiciary plays a vital role in the running of the judiciary and are essential to the delivery of justice. Their salaries however are too low despite the important role they play in the administration of justice. In Zambia majority of cases are handled at Subordinate Courts and most people access justice through the lower courts as compared to the High Court and Supreme Court but the gap as regards salaries and conditions of service for the higher bench and the lower bench is too wide despite the fact that they perform the same functions.³¹ This state of affairs has a negative factor in the delivery of justice by the judiciary as a whole.

³¹ Interview with a judicial staff, February 13, 2012.

4.3. Corruption in the Judiciary and its Effects

Corruption is ‘the abuse of entrusted power for private gain’. This means both financial or material gain and non-material gain, such as the furtherance of political or professional ambitions. Generally Corruption has a negative impact on many aspects of life and hinders effective poverty reduction. It is undermining justice in many parts of the world, denying victims and the accused the basic human right to a fair trial and impartial trial.³²

Judicial corruption includes any inappropriate influence on the impartiality of the judicial process by any actor within the court system. For example a judge or magistrate may allow or exclude evidence with the aim of justifying the acquittal of a guilty defendant of high political or social status. Judges and court officials may manipulate court dates to favour one party or another. There are two types of corruption that most affect judiciaries:³³

(a) Political Interference in Judicial Processes

Despite many years of advocating and protecting judicial independence, judges and court personnel around the world continue to face pressure to rule in favour of powerful political or economic entities, rather than according to the law. Political interference comes about by threat, intimidation and simple bribery of judges and court officials, but also the manipulation of judicial appointments, salaries and conditions of service. The key to prevent this type of corruption is constitutional and legal mechanisms that shield judges from sudden dismissal or transfer without the benefit of an impartial inquiry. This protection goes much of the way toward ensuring that courts, judges and their judgments are independent of outside influences.

(b) Bribery

Bribery can occur at every point of interaction in the judicial system: court officials may extort money for work they should do anyway; Lawyers may charge additional ‘fees’ to expedite or delay cases, or to direct client to judges or court official known to take

³² Transparency International, *the global coalition against corruption, Global Corruption Report* (New York: Cambridge University Press, 2007), xxi.

³³ Transparency International: *the global coalition against corruption*, xxii-iii.

bribes for favorable decisions. For this part, court officials or judges may accept bribes to delay or accelerate cases, accept or deny appeals, influence other judges or court official or simply decide a case in a certain way.

One way of tackling this vice is ensuring that judges, magistrates and other court officials are rewarded adequately to avoid them supplementing their insufficient salaries and conditions of service with bribes.

This is why corruption in the courts is perceived as a major problem worldwide. The most recent corruption Barometer published by Transparency International (TI2009) indicates that nearly half of the respondents across the world consider the judiciary to be corrupt, and petty bribes paid in connection with a legal process seem to be on the rise. Corruption may take many guises in and around the court room: bribery, extortion, influence peddling, and nepotism are the main forms that people encounter. Different patterns emerge in different places. In Nigeria, for example, surveys show that corruption facilitates the destruction of evidence and speedier hearings. In Jordan, the dominant concern is that judges' rulings may be influenced by family or tribal affiliations.³⁴

The drivers of corruption include executive interference, social pressure, lack of citizen voice, low salaries, ignorance of relevant laws, and poor management.

The consequences of judicial corruption are as diverse as its forms: the most obvious impact, of course, is the corrosion of the rule of law. Not only do powerful criminals escape sanctions, but ordinary citizens, particularly the poor are denied effective access to justice. Corruption also reduces the quality of justice. Poorly trained judges, magistrates, prosecutors and court staff may be employed and promoted in exchange for favors.

Economically, a corrupt judiciary is presumed to dissuade investors and inhibit trade. Politically, executive interference in high profile cases erodes citizens' faith in the government.

³⁴ Jessica Schultz, "The UNCAC and judicial corruption: Requirements and avenues for reform," U4 Brief 18 (September 2009), 1

In the broader governance context, corruption in the judiciary undermines the effectiveness of other institutions. For example, an anti-corruption commission that relies on an attorney general's office to prosecute sensitive cases will be foiled if that office is tainted by corruption.³⁵

Corruption affects a number of Zambia's institutions and the judiciary has not been spared. In 2004 the World Bank carried out a series of in-depth, countrywide surveys of corruption, assessing the views of three groups: households, public officials and business enterprises. About 40 per cent of households and 25 per cent of business managers reported that bribes were paid to speed up legal proceedings. This has led to a notable erosion of confidence in the justice system. For example, over 80 per cent of the households surveyed reported that they needed to use the court system, but decided not to, and just over 60 per cent of businesses said the same.³⁶

In Zambia lack of human and financial resources has been the major problem faced by the judiciary. Salaries of judges, magistrates and justices remain unsatisfactory, particularly in lower courts. In July 1997, judges salaries were more than doubled, but magistrates and justices did not benefit. Inadequate human resources beset the dispensation of justice. According to the Ministry of justice, there were 65 districts with 150 magistrates and 453 local courts with around 900 justices in 2002. The chief administrator of courts at that time said there were only 23 magistrates to cover 72 magistrate positions. Under the local Courts Act Chapter 54, the judicial service commission appoints as many local court justices, local court advisers and local courts officers as it sees fit. Lack of training and shortages of magistrates mean that poorly trained individuals (some of whom may simply be retired civil servants recommended by traditional leaders) are applying complex laws to difficult facts and have to rely on the

³⁵ Jessica Schultz, "The UNCAC and judicial corruption: Requirements and avenues for reform," U4 Brief 18 (September 2009), 2.

³⁶ Davie Chikalanga, Goodwell Lungu and Ngozi Yezi, *Zambian Judiciary struggles to modernize. Global Corruption Report, Transparency International* (New York: Cambridge University Press, 2007), 287.

competence of lawyers to guide them. In this way, judges are open to manipulation by lawyers seeking the best deal for their clients.³⁷

In *Sidney Chileshe vs. The people*, a Lusaka magistrate fined Sidney Chileshe K5,000,000 for offences related to his cultivation and distribution of marijuana. The magistrate wrongly accepted an argument by the defense counsel that she had the discretion to impose a fine when the law did not explicitly give her this power. The appeal judge was shocked by this clear misapplication of the law and instead imposed five years imprisonment with hard labour.

4.4 Ways of Combating Corruption in the Judiciary

Corruption affects the lives of everyone, many states have therefore developed policies and laws to try to combat and prevent corruption. Reducing corruption requires an appropriate legal framework. New laws or amendments may be needed to regulate the appointment and conduct of members of the judiciary. Likewise, laws that provide immunity for members of the judiciary may need to be modified. While such immunity strengthens the independence of the judiciary by protecting its members against malicious prosecution, it should be limited in time and scope (to functional immunity).³⁸

The following recommendations reflect best practice in preventing corruption in the judiciary.

4.4.1 Institutional Strengthening

Increasing the effectiveness of courts can reduce both the incentives and opportunities for judicial corruption. Measures that typically fall within the ambit of ‘institutional strengthening’ include:

- Introducing information and communication technologies, including case management system;
- Publishing and disseminating judicial decisions;

³⁷ Davie Chikalanga, Goodwell Lungu and Ngozi Yezi, *Zambian Judiciary struggles to modernize*, 287-89.

³⁸ Schultz, “The UNCAC and judicial corruption,” 2-3.

- Raising salaries;
- Strengthening legal education, including on anti-corruption
- Providing training to judges, magistrates and other court staff;
- Supporting professional associations (lawyer and judge associations);
- Developing ethics regimes and standards for justice sector employees;
- Enhancing citizen awareness of rights and court procedures; and
- Establishing complaints mechanisms for reporting corruption.

Evaluations of judicial reform suggest that sometimes simple interventions can have significant effects. For example, in Nigeria, a complaints system consisting of complaints boxes and review committees was widely perceived to be the most useful measures in a complicated programme of judicial reform (TI 2007). On the other hand, two interventions that enjoy perhaps the broadest appeal among practitioners – namely training (‘capacity building’) and salary increases – are extremely difficult to implement successfully. In Nigeria and Ghana, for example, donors funded training for court stenographers to speed up court processes. Because this was done without other measures to secure positions and salaries, many of these stenographers simply left their jobs for better ones as soon as they could. Such experience suggest training can only improve performance if accompanying measures, such as providing people incentives to remain in the job and use their new skills, are also in place (piron 2006). A similar word of caution applies to increasing salaries. Experience addressing corruption within other public sectors shows that corruption may continue to thrive even when pay rates and working conditions improve. In situation where there is high demand for corrupt services, it is unrealistic to expect that higher wages alone will offset incentives for bribery. Salary increases need to be linked to a credible threat of sanctions for non-compliance, including through institutional control mechanisms.³⁹

In the Zambian set up the situation as regards the above measure is different. Salaries for judges are increased almost every year and not for magistrates and other court officials

³⁹ Schultz, “The UNCAC and judicial corruption,” 3-4.