

Notes

- 1 The APRM is an instrument voluntarily acceded to by member states of the African Union (AU) as a self-monitoring mechanism. The primary purpose is to foster the adoption of policies, standards and practices that lead to human security and political stability, high economic growth, sustainable development, and accelerated regional and continental economic integration.
- 2 J I Mwanje, *Qualitative research process*, Addis Ababa: Organization for Social Science Research in Eastern and Southern Africa (OSSREA), 2001, 17–18.
- 3 Muna B Ndulo and Robert B Kent, The Constitution of Zambia, *Zambia Law Journal* 30 (1998), 11.
- 4 Ibid, 13.
- 5 Ibid, 16.
- 6 Ibid.
- 7 Republic of Zambia, Government White Paper 1 of 1995.
- 8 Ndulo and Kent, The Constitution of Zambia, 23.
- 9 Ibid, 24.
- 10 Republic of Zambia, Commission on Legal Empowerment of the Poor, Draft Working Group 1, Access to justice and the rule of law meeting, July 2007.
- 11 Ibid.
- 12 Ibid.
- 13 Ibid.
- 14 Zambia is a dualist state, which means that a treaty only becomes binding as domestic law once Parliament has passed a special enabling statute enacting the treaty as part of ‘municipal’ (internal) law. This is referred to as ‘domestication’. In a strict sense, Zambia has so far not domesticated any of the international human rights treaties. However, the government has adopted the National Capacity-Building Programme for Good Governance, which prioritises constitutionalism and human rights and acknowledges the problems created by the

lack of domestication. It states that 'Zambia is working at the possibility of incorporating International treaties and instruments, to which Zambia is a party, into domestic law'.

- 15 As this was not a nationally representative survey, results cannot be extrapolated to the rest of the country.
- 16 Transparency International - Zambia, Corruption Perception Index, 2001, http://www.transparency.org/pressreleases_archive/2002/2002.08.28.cpi.en.htm (accessed 24 September 2007).
- 17 Laurent C W Kaela, *Zambia national governance baseline survey report*, Lusaka: Department of Political and Administrative Studies, University of Zambia, 2004.
- 18 Transparency International, Corruptions Index, Bribe Payers Index, 2005, <http://www.transparency.org> (accessed 24 September 2007).
- 19 *The Post*, 15 October 2007.
- 20 Republic of Zambia, Anti-Corruption Commission, *Complaints register*, 2003.
- 21 Republic of Zambia, Anti-Corruption Commission, *Complaints register*, 2004.
- 22 *The Post*, 19 November 2005.
- 23 Afrobarometer, *Survey – Zambia, 2005*, www.afrobarometer.org (accessed 19 June 2007).
- 24 Mildred Mulenga, Illicit drugs: Zambia emerges as a gateway, *Times of Zambia*, 27 April 1998.
- 25 *The Post*, 6 December 2005.
- 26 Afrobarometer, *Survey – Zambia, 2005*.
- 27 *The Post*, 16 May 2007.
- 28 Ibid.
- 29 United States Department of Labor, *2007 Findings on the worst forms of child labor - Zambia*, UNHCR Refworld, 27 August 2008, <http://www.unhcr.org/refworld/docid/48caa49ac.html> (accessed 16 January 2009).
- 30 *Sunday Times of Zambia*, 26 August 2007.
- 31 M Bratton and B L Katundu, A preliminary assessment of the political attitudes of Zambian citizens, MSU Working Paper 4, 1993, 10–11.
- 32 Interviews and *The Post*, 16 May 2007.
- 33 F E Jansen and G J N Bruinsma, Policing organized crime: a new direction, *European Journal on Criminal Policy and Research* 5(4) (1997), 85–98.
- 34 Ibid.
- 35 The FBI defines organised crime as activities by any group which has some formalised structure and whose primary objective is to obtain money through illegal activities. Such groups

maintain their position through actual or threatened violence, corrupt public officials, graft or extortion, and generally have a significant impact on the people in the locales, region or the whole country in which they operate.

- 36 L Saboi, The role of the Drug Enforcement Commission, Paper presented at a workshop on Fighting Crime in Zambia held at the Intercontinental Hotel in Lusaka, Zambia, 2006.
- 37 See full report by Amnesty International Zambia, Applying the law fairly or fatally? Police violations of human rights, 2008, <http://www.amnesty.org/en/library/info/AFR63/001/1999> (accessed January 2008).
- 38 See the Zambia Police Reserve Act, 1950 (Act 45 of 1950), as amended. Also see the Zambia Police Reserve Act, *The Laws of Zambia* 9, 1996 edition (revised).
- 39 T Carothers, *Promoting rule of law abroad*, Washington: Carnegie Foundation, 2006.
- 40 Ibid.
- 41 Zambia Police Service, *Zambia prisons and police service establishment*, Lusaka: Government of Zambia, 2005.
- 42 S D Katantamalundu, *Developing a crime analysis information system for a police service in a developing country. The case of Zambia Police*, Enschede: ITC, 2004, http://www.itc.nl/library/academic_output/AcademicOutput.aspx?p=5&y=4&l=20-20k (accessed 16 January 2009).
- 43 Republic of Zambia, Human Rights Commission, *Annual report, 2002*, <http://www.hrc.org.zm/> (accessed 15 November 2007).
- 44 *The Post*, 27 November 2006.
- 45 Republic of Zambia, Human Rights Commission, *Annual report, 2002*.
- 46 Ibid.
- 47 Other communities have sought to address the limitations and bad reputation of the neighbourhood watches by forming crime prevention associations that involve the residents of the communities.
- 48 U Butalia, Small arms, big trouble, *New Internationalist*, 2005, <http://www.newint.org/issue375/view.htm> (accessed 15 September 2007).
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- 50 Zambia Police (Amendment) Act, 1996 (Act 14 of 1996).
- 51 Ibid.
- 52 Ibid.
- 53 Provided for by the Zambia Police (Amendment) Act, 1996.
- 54 Ibid.
- 55 Ibid.

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- 61 Republic of Zambia, Human Rights Commission, *Annual report*, 2002.
- 62 Interviews and *The Post*, 16 May 2007.
- 63 Ibid.
- 64 United Nations Office on Drugs and Crime, Zambia–Lusaka urban survey data 2003, <http://www.unodc.org/unodc/en/data-and-analysis/index.html> (accessed 24 May 2007).
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- 67 Ibid.
- 68 *The Post*, 11 July 2007.
- 69 Transparency International - Zambia, *Show me the money*, TI-Z report, Lusaka: TI-Z, 2006.
- 70 Ibid.
- 71 Ibid.
- 72 See TI-Z, *Annual report 2005* and Afrobarometer, Survey results, 2003, <http://www.afrobarometer.org>.
- 73 *The Post*, 24 May 2007.
- 74 Kaela, *National governance baseline survey report*.
- 75 *The Post*, 24 May 2007.
- 76 Southern Africa Forum Against Corruption, Official launching, Maseru, 11–12 July 2001, <http://www.lesotho.gov.ls/articles/Speech-%20LAW-SAFAC.htm> (accessed 15 March 2008).
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- 79 Bank of Zambia, Anti-money laundering directives, 2004, <http://www.boz.zm/> (accessed 2 March 2008).
- 80 Amnesty International, *Zambia: applying the law fairly or fatally?*
- 81 Republic of Zambia, Draft national criminal prosecutions policy, 4.
- 82 An entry made on the record by which the prosecutor or plaintiff declares that he will proceed no further. A *nolle prosequi* may be entered in either a criminal or a civil case.
- 83 Article 91(1) of the Constitution of Zambia.
- 84 *The Post*, 17 June and 21 June 2005.
- 85 *The Post*, 31 March 2004.
- 86 See WLSA Zambia, *Justice in Zambia: myth or reality: women and the administration of justice*, Lusaka: WLSA Research Trust, 1999.
- 87 Alfred Chanda, *Responses of the justice delivery system in Zambia*, Lusaka: WLSA Research Trust Zambia, 2001; WLSA Zambia, *Justice in Zambia: myth or reality*.
- 88 Ibid.
- 89 Article 18 of the Constitution and the Criminal Procedure Code.
- 90 Chanda, *Responses of the justice delivery system in Zambia*.
- 91 *Agence France-Presse*, Zambia commutes death sentences, 29 November 2005.
- 92 *Times of Zambia*, 26 August 2007.
- 93 WLSA Zambia, *Justice in Zambia*.
- 94 Details of the source are not available. Cases were heard in mid-2004.
- 95 Patrick Matibini, Access to justice and the rule of law, Issue paper presented to the Commission on Legal Empowerment of The Poor, undated, <http://www.undp.org/LegalEmpowerment/reports/> (accessed 17 September 2007).
- 96 See *ibid*: (1) A seditious intention is an intention -
 - (a) to advocate the desirability of overthrowing by unlawful means the Government as by law established; or
 - (b) to bring into hatred or contempt or to excite disaffection against the Government as by law established; or
 - (c) to excite the people of Zambia to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Zambia as by law established; or
 - (d) to bring into hatred or contempt or to excite disaffection against the administration of justice in Zambia; or
 - (e) to raise discontent or disaffection among the people of Zambia; or
 - (f) to promote feelings of ill will or hostility between different communities or different parts of a community; or

- (g) to promote feelings of ill will or hostility between different classes of the population of Zambia; or
- (h) to advocate the desirability of any part of Zambia becoming an independent state or otherwise seceding from the Republic; or
- (i) to incite violence or any offence prejudicial to public order or in disturbance of the public peace; or
- (j) to incite resistance, either active or passive, or disobedience to any law or the administration thereof

97 Matibini, Access to justice and the rule of law.

98 Mulela Margaret Munalula, *Negotiating gender equality before the law: decisions from the Zambian courts*, Paper presented at the International Conference on Negotiating Gender Justice, Goteborg University, Sweden: Centre for Global Gender Studies, 28 February – 2 March 2005.

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100 Ibid.

101 See the Criminal Procedure Code.

102 See Mulela Margaret Munalula, *Legal process: Zambian cases, legislation, and commentaries*, Zambia: University of Zambia Press for the School of Law, 2004.

103 See Republic of Zambia, Human Rights Commission, *Annual report, 2007*, Lusaka, <http://www.hrc.org.zm/> (accessed 19 November 2007).

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105 Transparency International - Zambia, *Zambian judiciary struggles to modernise*. Global Corruption Report, 2007.

106 Ibid.

107 See German Technical Cooperation Agency, *Improvement of the legal status of women and girls in Zambia*, undated report, and Human Rights Watch, *Suffering in silence: the links between human rights abuses and HIV transmission to girls in Zambia*, Human Rights Watch, 2002.

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110 A W Chanda, The role of lower courts in the domestic implementation of human rights, *Zambia Law Journal* 33 (2001), 1–17.

111 Judges (Conditions of Service) Act, 1996 (Act 14 of 1996), *The Laws of Zambia* 15, 1996 edition (revised); Institute of Human Rights, Intellectual Property and Development Trust, *Zambia*, 1995 edition (revised), 15, 893–903.

- 112 Kaela, *National governance baseline survey report*, 6–7, 81–85.
- 113 Ibid.
- 114 WLSA Zambia, *Justice in Zambia: women and the administration of justice*, Lusaka: WLSA Research Trust, 1999. The latest figures were not available at the time of writing this report.
- 115 German Technical Cooperation Agency, *Training for local court justices and messengers conducted country wide from 2000 to 2004*.
- 116 It is alleged that the change was made by former President Chiluba in order to punish a person who was rumoured to be having an affair with his wife at the time, Mrs Vera Chiluba.
- 117 See See Munalula, *An outline of the study of jurisprudence*.
- 118 Ibid.
- 119 *The Post*, 2002.
- 120 Chikwanha, *Zambia – crime and criminal justice country situational report*.
- 121 See for example sections 52(3), 52(5)c, 59, 60, 77, 92(1)a and 118(3) of the Juvenile Act, as amended, and sections 102(2), 134.1a of the Prisons Act.
- 122 Zambia has a very young population, with children under the age of 18 years representing more than 50 per cent of the entire population.
- 123 Juvenile Act, cap 53, part I, section 2(1).
- 124 Customary law and custom are observed in juvenile cases in terms of section 1(2) of the Juvenile Act, as long as this is in the interests of the child.
- 125 Lukas Muntingh, *Evaluation report on Zambia child justice system*, Republic of Zambia, Lusaka, 2005, http://www.unicef.org/evaldatabase/files/Zambia_2005_002_Child_Justice.pdf.
- 126 Ibid, 36.
- 127 See the UN Human Rights Committee, *Human rights violations in Zambia, Part III: Child rights' situation*, 90th session, 2007.
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- 129 Muntingh, *Evaluation report on Zambia child justice system*.
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- 133 See the UNICEF-supported projects in Muntingh, *Evaluation report on Zambia child justice system*.

- 134 Othman, Haroub and Maina, Chris Peter (eds), *Perspective on legal aid and access to justice in Zambia*, Lusaka: Zambia Legal Services Centre, 2003, 17.
- 135 WLSA Zambia, *Justice in Zambia: myth or reality: women and the administration of justice*, Lusaka: WLSA Research Trust, 1999.
- 136 See Munalula, *An outline of the study of jurisprudence*.
- 137 Former President Chiluba is currently on trial after corruption and abuse of office charges were filed against him following a parliamentary decision to strip him of his immunity. Parliament was forced to make a decision after civil society groups camped outside Parliament grounds and would not leave until the immunity was withdrawn. Mr Bulaya, an official in the Mwanawasa government, was recently convicted of abuse of office after agitation by civil society and the local media led to his arrest and subsequent trial.
- 138 *The Post* of 24 June 2002 carried the headline 'Chiluba bribes Justice Ngulube', with detailed information from Zambia National Commercial Bank records of payments amounting of US\$168 000 made to the Chief Justice by the former Zambia Security Intelligence Chief, Xavier Chungu. In the ensuing furore, Justice Ngulube was forced to take early retirement.
- 139 See Chanda, The role of lower courts in domestic implementation of human rights, 1–17.
- 140 Liyoka Kakula, *The impact of political independence on Zambian customary law [microform]: a study of the customary law of the Malozi of western Zambia*, Madison, Wis: sn, 1982.
- 141 See Leila Chirayat, Caroline Sage and Michael Woolcock, Customary law and policy reform: engaging with plurality of justice system, <http://krex.k-state.edu/dspace/bitstream/2097/178/1/> (accessed 9 May 2007).
- 142 See M Kane, J Oloka-Onyango and A Tejan-Cole, Reassessing customary law systems as a vehicle for providing equitable access to justice for the poor', Paper presented at Arusha Conference 'New Frontiers of Social Policy', 12-15 December 2005.
- 143 Ibid.
- 144 See WLSA Zambia, *Chasing the mirage: women and the administration of justice*, Lusaka: WLSA Research Trust, 1999 and WLSA Zambia, *Women and justice: myth or reality in Zambia*, Lusaka: WLSA Research Trust, 2000.
- 145 Ibid.
- 146 Ibid.
- 147 Ibid.
- 148 Chirayat, Sage and Woolcock, *Customary law and policy reform*.
- 149 Republic of Zambia, Law Development Commission, *Report on the local courts system*, Lusaka: LDC, 2006.
- 150 See Winnie Sithole Mwenda, Paradigms of alternative dispute resolution and justice delivery in Zambia, Unpublished PhD thesis, Pretoria: University of South Africa, 2006.

- 151 See Law Development Commission, *Report on the local courts system*.
- 152 Such a case actually occurred and the mother organised an initiation ceremony to 'teach' the girl how to run a home as a married 'woman' and women were hired to take the girl to the man's home. The mother, the other women and the man were arrested. See *Zambia Daily Mail*, 8 October 2007.
- 153 See A W Chanda, L C W Kaela and J C Momba, *Transparency and accountability of state institutions in Zambia*, Research Report commissioned by Afronet 2002, Lusaka and the Republic of Zambia, Human Rights Commission Report 2005, Lusaka, <http://www.hrc.org.zm/> (accessed 20 December 2007).
- 154 Ibid.
- 155 Ibid.
- 156 See Republic of Zambia, Zambia Prison Service, Daily unlock report, 21 September 2007, compiled from statistics provided by all prisons in the country, Lusaka: Government of Zambia, 2007.
- 157 Ibid, 68.
- 158 See Republic of Zambia, Zambia Prison Service, *Prisons needs assessment report*, Report commissioned by the Commissioner of the Zambia Prison Service Lusaka, April 2004, and also section 9 of the Prisons Act.
- 159 See Monica Kunda, Build new prisons, *The Legal Resources Foundation News* 96, May 2007.
- 160 *The Post*, 23 May 2007.
- 161 Chanda et al, *Transparency and accountability of state institutions in Zambia*.
- 162 *Zambia Daily Mail*, 25 May 2007.
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- 164 Ibid.
- 165 Republic of Zambia, Human Rights Commission, *Report on the Central Province*, Lusaka: 2005, <http://www.hrc.org.zm/> (accessed 15 November 2007).
- 166 Ibid.
- 167 Catholic Centre for Justice and Peace, *Development and peace report on 'para-legal best practices'*, Lusaka: CCJP, 2004.
- 168 *Times of Zambia*, 14 August 2007.
- 169 *The Post*, 17 June 2006.