

Zambia Judicial Sector



PUBLIC EXPENDITURE AND INSTITUTIONAL REVIEW (PEIR)

FINAL REPORT

JUNE 22, 2022



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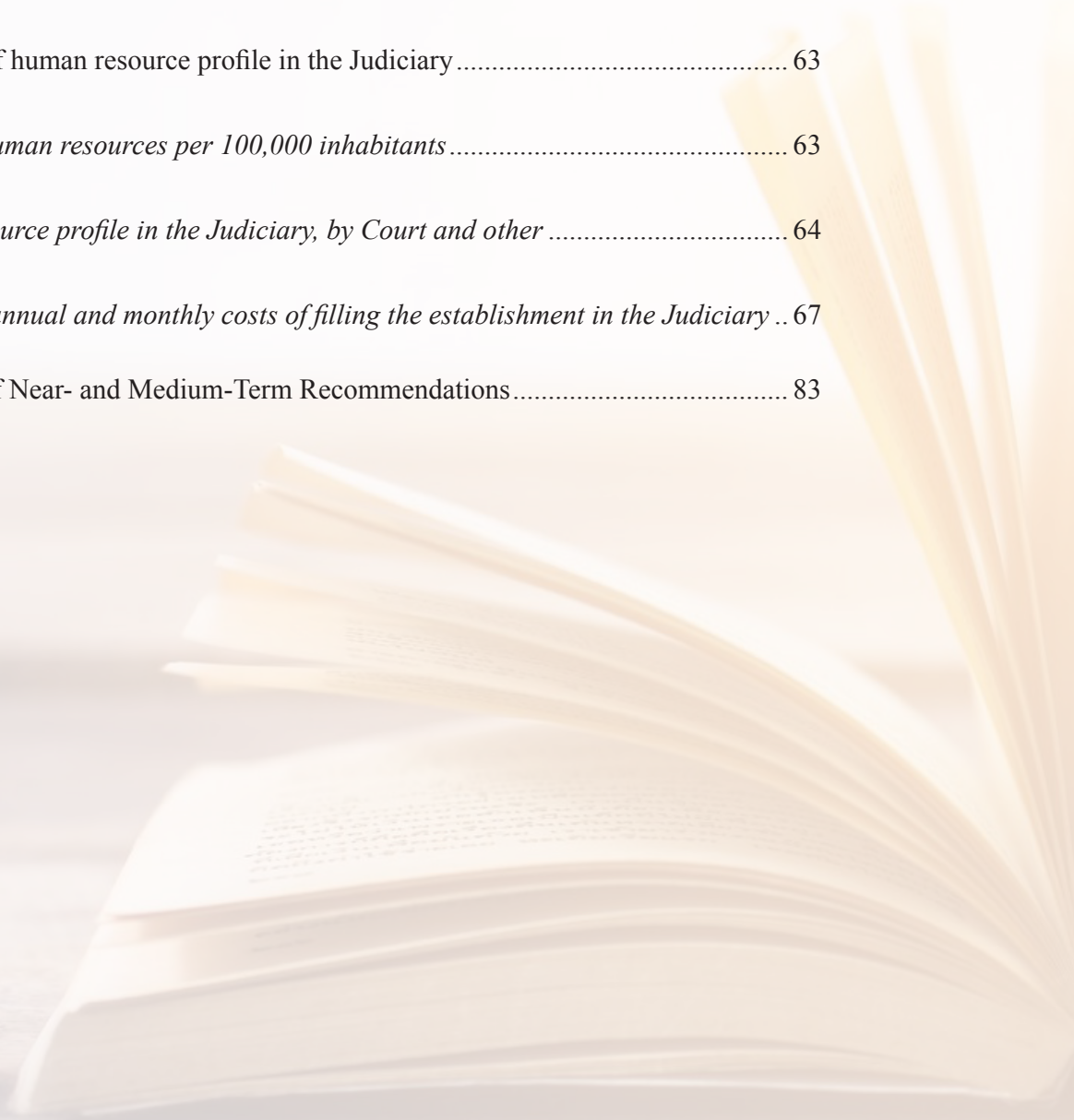
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ACRONYMS

ADR	Alternative Dispute Resolution
BoZ	Bank of Zambia
BSA	British South African Company
CCR	Case Clearance Rate
CGAPs	Central Government Accounting Policies
CP	Cooperating Partner
CSO	Civil Society Organization
DPP	Director of Public Prosecution
DT	Disposition Time
GBV	Gender-based Violence
GDP	Gross Domestic Product
GIZ	German Agency for International Cooperation (<i>Gesellschaft für Internationale Zusammenarbeit</i>)
HQ	Headquarters
HR	Human Resources
HRC	Human Rights Commission
ICF	Investment Climate Facility
IT	Information Technology
ICT	Information and Communication Technologies
IFMIS	Integrated Financial Management Information System
IPSAS	International Public Sector Accounting Standards
IPSASB	International Public Sector Accounting Standards Board
JAR	Judicial Annual Report
JCC	Judicial Complaints Commission
JSC	Judicial Service Commission
KII	Key Informant Interview
LAB	Legal Aid Board
LAZ	Law Association of Zambia
LRF	Legal Resource Foundation
LSU	Legal Service Unit

MHID	Ministry of Housing and Infrastructure Development
MIHUD	Ministry of Infrastructure, Housing and Urban Development
MoFNP	Ministry of Finance and National Planning
MoJ	Ministry of Justice
MoLG	Ministry of Local Government
MPSA	Ministries, Provinces, and Spending Agencies
MTC	Ministry of Transport and Communications
MTEF	Medium-Term Expenditure Framework
NDPs	National Development Plans
NPA	National Prosecution Authority
OSAC	Overseas Security Advisory Council
PEs	Personnel Emoluments
PEMEC	Payroll Management Establishment and Control
PR	Productivity Rate
PEIR	Public Expenditure and Institutional Review
PIA	Pensions and Insurance Authority
PFM	Public Financial Management
PRISCCA	Prison Care and Counselling Association
PSMD	Public Service Management Division
RDC	Recurrent Developmental Charge
SAIPAR	Southern African Institute for Policy and Research
SCC	Small Claims Court
TSA	Treasury Single Account
UN	United Nations
VSU	Victim Support Unit
WJP	World Justice Project
ZAJIS	Zambia Justice Information Systems
ZLR	Zambian Law Reports
ZPPA	Zambia Public Procurement Authority
ZRA	Zambia Revenue Authority
ZIALE	Zambia Institute of Advanced Legal Education

EXECUTIVE SUMMARY

This Public Expenditure and Institutional Review (PEIR) of the Judiciary of the Republic of Zambia responds to a request by the Ministry of Justice (MoJ) to the World Bank, to support a problem-driven and evidence-based inquiry into the challenges associated with service delivery in Zambia's judicial system. The MoJ initiated this request with the objective of preparing an investment plan to support the improved functioning of the Judiciary.

The following six overarching questions underpinned the inquiry:

- i) What is the access to justice landscape in Zambia, and what barriers impede access to justice for the general population?
- ii) How adequate is government financing for the judicial sector, and what are the main public financial management issues in the sector?
- iii) How is the sector performing across the following five indicators: independence, efficiency, accessibility, accountability, and effectiveness?
- iv) What is the state of the sector's human resources, physical infrastructure, and information technology (IT) capabilities?
- v) What are the main binding constraints to service delivery in the Judicial Sector?
- vi) What are some interventions that can be taken in the near- to medium-term to ameliorate the identified binding constraints?

A multi-pronged analytical approach was used to execute the study, including qualitative and quantitative analyses supplemented by key informant interviews with judiciary officials. Two consultations were organized, one with the Government and the Judiciary and the second with a wider group of stakeholders including academia, civil society organizations (CSOs), the legal profession, and related institutions such as the Zambia Correction Services. The analysis was necessarily limited by data deficiencies including missing and incomplete data, duplications in some variables, as well as inconsistencies across data sources.

The main finding of this report is that although there is some level of effectiveness within the Zambian court system, overall, the system is performing well below its capabilities and true potential. The judiciary is encountering significant service delivery challenges at all levels of the court hierarchy. The key binding constraints to service delivery in the judicial sector have been identified as follows:

- **Chronic underfunding of the sector:** Inadequate funding is the most significant binding constraint to service delivery in the judiciary sector. Subdued economic growth, a fragile macroeconomic environment, tight fiscal space, and unsustainable debt levels have meant that Zambia has had fewer resources to spend on the judicial sector. Resultant funding gaps have had severe debilitating effects on the administration of justice in Zambia — stifling judiciary operations, promoting inefficiencies, and causing a stark deterioration in access to justice indicators.

- **Limited access to the court system:** The limited geographical reach of courts at all levels is a significant binding constraint to service delivery in the judicial system. Many communities and districts do not have functioning courts. Further, the complexity of the court/legal system, high costs of legal services, limited legal aid services, and legal information asymmetries mean that most Zambians are unable to meaningfully access the formal court system.
- **Inefficiencies and ineffectiveness in the sector:** Inadequate courtroom space, dilapidated infrastructure, significant adjudicative shortages, high workloads, poor data management practices, significant information and communication technologies (ICT) gaps, and inadequate administrative support hamper judicial efficiency and effectiveness. Additionally, no management strategy exists to maximize operational efficiency around core strategies and milestones. — The organizational design of the institutional and the human resource systems that support the Judiciary has not been rationalized against the core business and mission, which is the fair and equitable resolution of disputes in a reasonable timeframe. Thus, there are limited reference points for process adaptation to monitor and maximize efficiency and performance at the various levels of judicial activity.
- **Limited training and professional development opportunities:** Failure to adequately provide training and professional development programs for judicial officers and support staff adversely impacts service delivery.
- **Declining public trust:** Perceptions of corruption and political interference undermine the legitimacy of the Judiciary. Similarly, the identified legislative frameworks for the protection of the independence of the Judiciary are weak. A failure to publish judicial decisions further erodes public trust.

While each of the above-described constraints is important on its own, it is to be recognized that they are also interlinked in many ways. Thus, the underfunding of the judicial sector contributes to the limited access to the court system as well as to the low levels of efficiency in judicial service delivery. These in turn contribute to the decline of public trust in the Judiciary. This report takes a holistic look at the various binding constraints and thereby attempts to assess their combined impact on judicial service delivery.

Many recommendations have been proposed in the report. However, the following set of key recommendations are priority actions proposed for the near and medium term.

- **The Judiciary must be sustainably financed.** A robust, innovative, and integrated resource mobilization strategy for the Judiciary is required, alongside increased budgetary allocations to reduce chronic funding gaps. Given Zambia's constrained fiscal space and ongoing global threats (Covid-19, war in Ukraine), devising an efficiency-enhancing mix of resources will be crucial to circumvent the chronic under-resourcing.
- **Increasing access to the court system is imperative.** Districts without Subordinate Courts must be serviced with a court, and non-functioning Local Courts must be revived. Decentralizing the specialized divisions of the High Court to the provincial centers will increase access to these services. Similarly, extending the reach of the Small Claims Court will ensure greater access to this important innovation. Finally, ensuring capacity in the state and non-state entities engaged in the provision of legal and quasi-legal services in Zambia is a must.

- **Significant infrastructure shortfalls across all levels of the Zambian courts must be addressed.** This includes the construction of new court houses and the rehabilitation and refurbishment of existing court infrastructure. The transportation needs of the court system at the district level must also be met. Court libraries must be modernized and regularly stocked with up-to-date print and digital legal research materials.
- **Human resource capabilities within the Judiciary must be strengthened to improve the efficiency and effectiveness of court operations.** Severe staff shortages in both adjudicative and administrative roles need to be resolved, and the Judiciary, as an institution, requires enhanced management capabilities to achieve its operational capacity. A diagnostic study to systematically review the functioning of the various operational departments of the Judiciary and propose tailored strategies to maximize operational efficiency and oversight around core strategies, outputs, and milestones could be considered. The establishment of a Judicial Training College is required to provide much-needed judicial education, professional training, and continuing professional development programs for judges, magistrates, and other court staff.
- **A concerted focus on data management and the provision of ICT systems is imperative for strengthening the delivery of justice services to the public.** Enhanced data capabilities in the Judiciary must facilitate data-driven and evidence-based decision-making and strategic planning. Rigorous and regular data collection will play a fundamental role in achieving the Judiciary's aims, including helping illustrate the need for greater resource allocation to the Judiciary; improving the management of existing human resources; and ascertaining the needs of court infrastructure and human resources. ICT is crucial to improving judiciary data collection and management. Additionally, ICT systems will facilitate judiciary data management and help enhance its quality. Further, enhanced IT systems will support the conduct of court business, including through public-facing systems, thereby increasing the Judiciary's efficiency.
- **Internal supervision of judicial performance must be strengthened to ensure robust accountability of the Judiciary to the people of Zambia.** This includes building capacity in the Chief Justice's office to support its significant supervisory functions and exploring options for performance management frameworks.
- **Information provided to the public by the Judiciary must be enhanced to address the public's lack of understanding of the court system and to improve trust:**
 - Provide free and unrestricted access to court decisions from all courts of record by publishing them online in a timely manner.
 - Develop simplified informational resources concerning self-representation and navigating the court system.
 - Develop public information concerning the work of the Judiciary, including exploring opportunities for a citizen engagement strategy.
 - Support outreach initiatives that connect the courts directly to the public to promote a broad understanding of how the courts can be accessed.

Table 1: Summary of Recommendations

Binding Constraint	Priority Recommendations
Chronic Underfunding	<ul style="list-style-type: none"> • Enhance budget performance within the Judiciary by developing efficient expenditure mechanisms and resource mixes. • Devolve functions to lower levels to enhance service delivery and improve PFM • Devise a robust, innovative, and integrated resource mobilization strategy for the Judiciary, including exploring alternative financing arrangements such as CPs/Donors. • Increase budgetary allocations to the Judiciary to reduce funding gaps.
Limited Access to Court System	<ul style="list-style-type: none"> • Extend the reach of the Subordinate Court by establishing Subordinate Courts in districts without a court. • Devolve the specialized divisions of the High Court to provincial centers across the country. • Extend the reach of the Small Claims Court beyond Lusaka, Ndola, and Kitwe. • Capacitate state and non-state entities engaged in the provision of legal and quasi-legal services.
Inefficiencies and Ineffectiveness	<ul style="list-style-type: none"> • Establish a standalone GBV court in a high-density area of Lusaka. • Construct and rehabilitate Local Courts in need of construction and rehabilitation. • Renovate and/or refurbish existing infrastructure. • Construct/establish designated premises for the Constitutional Court, the Family and Children’s Court, and the Industrial Labour Relations Court. • Commission an institutional management diagnostic study to enhance the administration and management of the Judiciary. • Enhance Data capabilities within the judiciary.
Unmet Training Needs	<ul style="list-style-type: none"> • Provide technical, financial, and logistical assistance to the envisaged Judicial Training College. • Support orientation programs for incoming judicial officers.
Public Trust in the Judiciary	<ul style="list-style-type: none"> • Build capacity in the Chief Justice’s office to support its significant supervisory functions. • Provide free and unrestricted access to court decisions from all courts of record. • Support outreach initiatives that connect the courts directly to the public.

1. INTRODUCTION

1.1 Background

An efficient and effective judiciary is positively associated with improved economic and development outcomes. In the specific context of development, justice programming is closely linked to poverty reduction and enhanced democratic governance (UNDP 2004). Further, a strong judicial sector “promotes economic growth through better enforcement of contracts and more secure property rights, while also leading to healthier business environments” (World Bank 2021). An effective judiciary is also a key factor in the safeguarding of fundamental rights and liberties, facilitating access to justice for the general populace. Expenditures for access to justice have a multiplier effect that results in improved investment, infrastructure, financial inclusion, entrepreneurship, and innovation. Many investment decisions are informed by the effectiveness of the justice system in the proposed jurisdiction of investment (Naraya and others 2000).

Zambia has a well-established legal system and judiciary. However, the Judiciary faces serious challenges. For example, significant underfunding from the state negatively impacts court operations. For example, in 2019, the Judiciary was allocated the sum of *Zambian Kwacha* (K) 515,740,938 (US\$25.79 million).¹ Much of these funds were used to cover personnel emoluments, with little left for capital projects and other necessary expenditures (Judiciary Annual Report 2019). The historic lack of capital investment in the sector means that judicial infrastructure is in a critical state of disrepair and that it is unable to meet the needs of the expanding judiciary (Judiciary Annual Report 2019). Further, the *Zambian* judiciary has yet to benefit from advancements in court reporting technology, audio-visual systems, digitization of court records, and other technological advancements that have vastly improved the efficiency of courts worldwide.

Additionally, due to a lack of funds, a high percentage of judicial posts remain unfilled at all levels of the Judiciary (Judiciary Annual Report 2019). These financial, technological, and human resource challenges have led to crippling inefficiencies, including case backlogs and court congestion — all of which have had cascading socioeconomic effects on ordinary litigants and defendants interfacing with the judicial system, not to mention the debilitating costs to commerce and to the national economy at large (Banda 2018). Issues of cost, distance, complexity, and length of court processes, as well as the lack of affordable legal representation, make the pursuit of justice in the courts a farfetched endeavor (Afrobarometer 2017).

The strengthening of the judicial sector has been a focus of *Zambia’s* developmental agenda in recent years. *Zambia’s* Seventh National Development Plan 2017-2021 contained a strategy to “Enhance access to justice” in development outcome No. 5 (Improved Rule of Law, Human Rights, and Constitutionalism). In particular, the strategy noted the Government’s focus on “strengthening the capacities of institutions within the legal and justice sector” to address challenges, such as the case backlog, judicial systems capacity, prison congestion, and inadequate legal representation (MoFNP, 2017). A notable achievement in the period was the introduction of *Zambia’s* first-ever National Legal Aid Policy in 2018. The principal goal of the policy was the expansion of legal aid services by increasing the capacity of non-state actors to provide legal aid for indigent persons.

¹ All conversions from *Zambian kwacha* to US Dollars in this report are approximate, and have been calculated at an exchange rate of 1 US Dollar = 20 *Zambian Kwachas*.

The Eighth National Development Plan 2022-2026 acknowledges that judicial reforms have been slow, and that “speedy dispensation of justice remains a challenge due to a number of factors such as the ratio of judicial officers to population” (MoNDP, 2022). The plan reaffirms the government’s commitment to making justice sector reform a core tenet of its agenda and in that regard, “Legal and Judicial reforms” are listed as a program under the plan’s fourth strategy to “Strengthen democratic and political governance”. The plan’s second strategy seeks to strengthen the criminal justice system by expanding fast-track courts and progressively decentralizing the judicial system through the “enhancing” of circuit courts.

In line with the Zambian government’s stated priority to strengthen the judicial sector, the MoJ has asked the World Bank to assess the institutional and financial binding constraints affecting efficient and effective service delivery in Zambia’s judicial sector.

1.2. Objectives and Scope

The Public Expenditure and Institutional Review (PEIR) is a two-pronged document containing, namely, an institutional and a public expenditure review of the judicial sector. Using a problem-driven and evidence-based approach, the PEIR seeks to provide an understanding of the challenges associated with service delivery in the judicial system, as well as the adequacy of financing and public expenditures in the sector. It is hoped that the findings of this review can enrich the sectoral knowledge base and potentially inform future legal, policy, institutional, and structural reforms. In addition, the knowledge from this review could help to shape policy dialogue about judicial reform, as well as future World Bank support to the sector.

In terms of the scope, the judicial system in Zambia consists of the formal court system and traditional dispute resolution systems recognized by the Constitution. The assessment restricts itself to the formal courts, namely, the Supreme Court; the Constitutional Court; the Court of Appeals; the High Court, and its specialized divisions;² the Small Claims Court (SCC); the Subordinate Court, including the gender-based violence (GBV) fast-track court; and the Local Court.

1.3. Structure of Report

This report contains five substantive components. Component one (Chapter three) provides an overview of Zambia’s formal court system, examining the structure, organization, and management of the judicial sector in Zambia. A historical overview of Zambia’s judicial system in the context of pluralism is briefly examined. Component two (Chapter four) summarizes the access to justice situation in Zambia, highlighting the challenges faced by the Judiciary in safeguarding access for the general population, as well as for historically disadvantaged and vulnerable groups. Component three (Chapter five) reviews the composition and evolution of the sector’s public expenditures in view of the requirements of the Constitution of Zambia and other applicable laws. Key concerns of component three include the Judiciary’s performance in budget execution and financial management, the adequacy of financing for the sector (both budget financing and donor financing), and current public financial management issues relevant to the sector. Component four (Chapter six) analyzes justice sector performance across the following five indicators: independence, efficiency, accessibility, accountability, and effectiveness. The analysis includes national trends in terms of demand for judicial services (incoming caseload) and the performance of the Judiciary (clearance rates and judicial productivity) across court levels.

² At the time of the study, the Economic and Financial Crimes Court, a newly established specialized division of the High Court, had not yet commenced its operations. Therefore, it is not considered in this report.

Component five (Chapter seven) reviews the evolution and composition of the judicial sector’s human resources. It covers the selection and training of judges and other judicial officers, and their allocation across the courts. The quality and adequacy of physical infrastructure facilities and the use of modern technology in the justice sector are also reviewed in component five.

The report then draws on the findings of the five substantive components of the review and synthesizes the binding constraints to service delivery in Zambia’s justice sector (Chapter eight). The report concludes by formulating a set of actionable recommendations over the near to medium term (Chapter nine).

2. METHODOLOGY

This study was conducted between January and May of 2022. A multi-pronged approach was employed to gather and analyze the information. A detailed discussion of the analytical techniques is provided below.

2.1. Data Collection

- *Desk Review:* This involved a review of national documents (policies, plans, budgets, and strategies); MoJ and judicial sector documents (work plans, strategic plans, progress, annual reports, annual returns, publications, and commissioned reports); Ministry of Finance and National Planning (MoFNP) documents (audited reports, budgets, yellow book, financial statements/blue book); and relevant literature concerning the public expenditure and institutional review. Government websites were also searched for information about judiciary operations and related policies, innovations, and programs. For the quantitative component of this project, detailed data about the judiciary sector's budget, expenditures, revenues (by source), activities by court level, human resources, caseloads, and infrastructure were gathered from routine judiciary administrative records. The macroeconomic and fiscal variables were drawn from various secondary sources, including the MoFNP, the Bank of Zambia (BoZ), and the Zambia Statistics Agency.
- *Stakeholder Consultations and Key Informant Interviews:* A thorough mapping of stakeholders in the Judiciary was conducted to gain deeper insight into the operation of the judicial sector, as well as to inform the selection of key informants. An inception meeting with the World Bank, the MoJ, and the Judiciary facilitated access to data sources and key informants. Due to the tight study timeline, key informant interviews (KIIs) were restricted to judiciary staff. They were primarily aimed at closing outstanding data gaps, triangulating the findings of the desk review, and contextualizing and validating the desk review findings. Given that most of the data concerning judiciary expenditures, operations, and institutional terrain is not publicly available, the team relied heavily on judiciary officials to provide information, documents, and expert opinions. The study conducted KIIs with the following members of the Judiciary:
 - Deputy Chief Justice
 - Chairperson – Taskforce on Backlog (also a Supreme Court Judge and former Judge-in-Charge of the Commercial Court)
 - Chairperson – Judicial Complaints Commission
 - Chief Administrator
 - Registrar (Supreme Court)
 - Registrar (General List)
 - Registrar (Family and Children's Court)
 - Registrar Commercial Court)
 - Registrar (Subordinate Court)

- Magistrate (GBV fast track court)
- Chief Local Courts Officer
- Senior Clerk –Small Claims Court
- Chief Accountant
- Deputy Human Resources (HR) Director.

2.2. Data Analysis

A combination of quantitative and qualitative data analysis methods was used to meet the study objectives. The collected quantitative data were subjected to trend, pattern, profile, and other descriptive statistical analyses. For the qualitative data, a suite of techniques was explored, including gap, content, and literature analyses.

2.3. Data Limitations and Caveats

The study encountered various data challenges including missing data, incomplete data, duplications in some of the variables, and inconsistencies across data sources. Some of the data on spending and caseloads was not available for all court types, and other types of data were only available for select years. For example, the complete annual case returns were only available for 2019. Thus, without a multi-year analysis, it was difficult to identify efficiency trends.

Some data was gleaned from the Annual Reports, but there were significant gaps and omissions. For example, in 2016, an Annual Report was not prepared or released by the Judiciary. Further, while conducting the analysis, a wholesale duplication of statistics in the 2017 and 2018 Annual Reports was observed. The improbability of statistics from different years being identical led to the discarding of these. At the time of this writing, the 2021 Annual Report had not been prepared or released by the Judiciary. Since the 2016 and 2021 Annual Reports were not available, and statistics in the 2017 and 2018 Annual Reports were duplicated, the analysis in component four was restricted to the years 2019 and 2020.

The impact of the COVID-19 pandemic on data trends must also be noted. As can be seen from the data presented in component four, productivity, disposal, and case clearance rates declined across almost all courts from 2019 to 2020 due to the pandemic. Therefore, the comparison between the statistics for the years 2019 and 2020 must be viewed in light of the impacts and disruptions of the pandemic. This caveat notwithstanding, the analysis paints a reasonably accurate picture of the institutional and expenditure situation in the judicial sector in Zambia.

These data deficiencies limited the depth of the analysis. They also adversely affected the ability to conduct detailed and comparable analyses across the study components. The data limitations explain the differences in study timeframes that are evident across components. Additionally, the short data collection time frame adversely impacted the data analysis process.

These data deficiencies and limitations should be borne in mind when generalizing the study findings. These caveats notwithstanding, the study findings provide a broad picture of the expenditure and institutional landscape for the Judiciary in Zambia. It should also be noted that the KIIs helped to fill some of the data gaps and contextualize the desk review findings, thereby enriching the analysis.

3. INSTITUTIONAL ORGANIZATION OF THE JUDICIAL SECTOR

This chapter provides an overview of Zambia's formal court system. It begins by tracing the historical development of the judicial administration system in the context of pluralism and then proceeds to examine the structure, organization, and management of the court system in Zambia.

3.1. Historical Overview of the Judicial Administration in Zambia

Zambia's formal legal system, including the judicial system, is a legacy of British colonial rule. Prior to colonial rule, the territory of present-day Zambia was populated by various self-governing ethnic nationalities. Each of these ethnic groupings evolved complex systems of governance and regulation of daily life. Many of these traditional judicial systems mirrored modern natural law views. As such, they were predominantly geared toward equitable outcomes and restorative justice.

Colonialism brought the English legal system and the traditional African justice system into contact, thus introducing English law, English-type courts, and English judicial administration (Hatchard and others 1994). Initially, however, except for a few areas such as criminal law, English law did not apply to Africans in the territory. This meant that the two systems of law were largely administered side by side and did not intermingle. This was authorized by Section 14 of the Royal Charter of October 29, 1889, which entrusted the British South African Company (BSA) with the administration of the territory now known as Zambia:

In the administration of justice to the said peoples or inhabitants, careful regard shall always be had to the customs and laws of the class or tribe or nation to which the parties respectively belong, especially with regard to the holding, possession, transfer and disposition of lands and goods, and testate or intestate succession thereto, and marriages, divorces, legitimacy, and other rights of property and personal rights, but subject to any British laws which may be in force in any of the territories aforesaid and applicable to the peoples or inhabitants thereof.

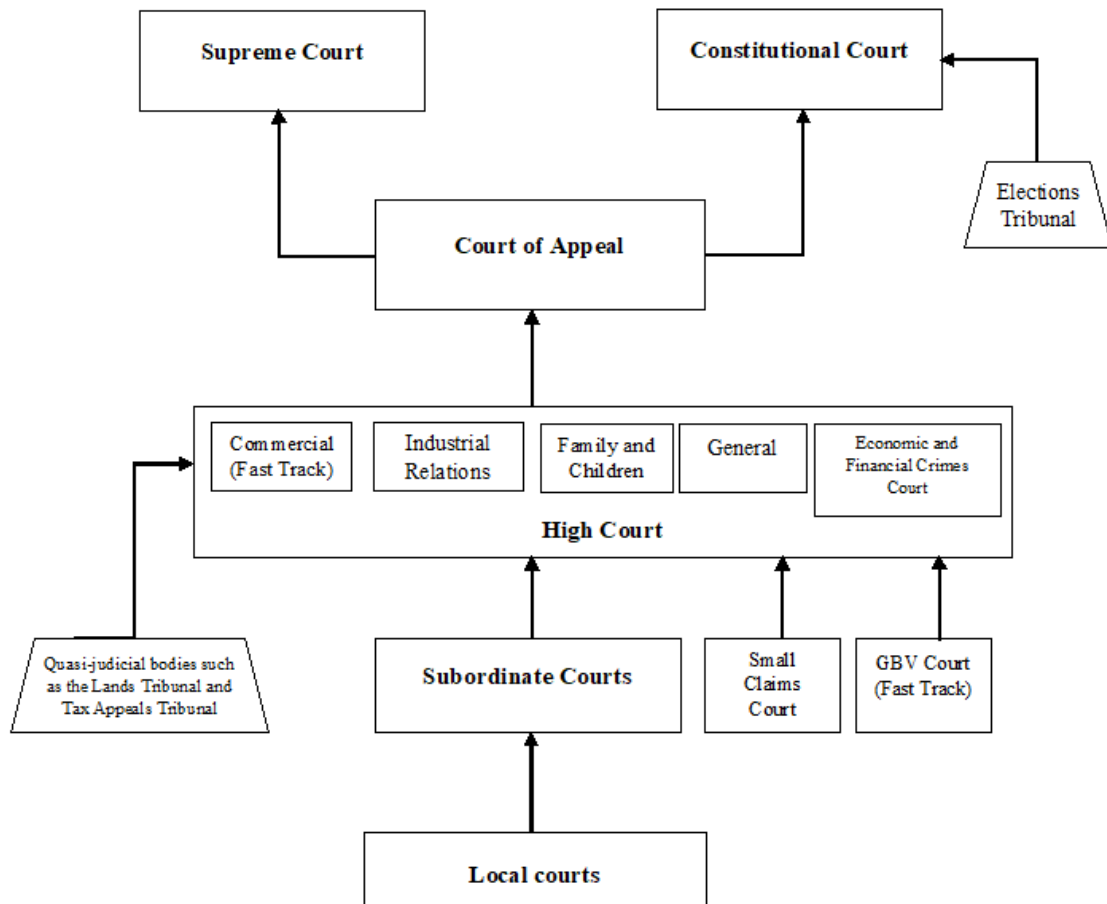
Essentially, this meant that Africans were left to manage their own judicial systems using customary law (Hoover and others 1984). As will be described later, this dichotomy is in many subtle ways still mirrored in Zambia's current institutional and normative framework for the judicial sector. As a result, Zambia's legal system is 'deeply plural' (Gloppen 2003). Simply put, as a former British colony, Zambia's formal legal system has British common law at its core. However, it also recognizes indigenous customary law. It is important to note that customary laws are not codified. As such, the phrase 'customary law' does not refer to a single system, but instead to a set of rights, liabilities, and duties across diverse ethnic groups (Institute for Security Studies 2018).

Zambia's current judicial system evolved from the judicial administration system put in motion during colonialism. Some of the current courts, such as the Subordinate and High Courts, were established during colonialism, whereas others like the Local Courts evolved from colonial predecessors. Other courts, such as the Supreme Court (originally named the Court of Appeal), were established upon independence in 1964. Several other courts have been established since

independence. Currently, the Constitution of Zambia provides for a hierarchy of four superior courts, namely, the High Court (Article 133), the Court of Appeal (Article 130), the Supreme Court (Article 124), and the Constitutional Court (Article 127). There are also three inferior courts, including the Small Claims Court, the Subordinate Court, and the Local Court.³ The court system is described in detail below and illustrated in Figure 1

3.2. The Court System: An Overview

Figure 1: Zambia's Court System



Source: Authors' own illustration based on Judiciary documents

Supreme Court

The current Supreme Court is the successor to the Court of Appeal established under the 1964 independence Constitution. It is currently established under Article 124 of the Zambian Constitution. It comprises an establishment of 13 judges, including, the Chief Justice, and the Deputy Chief Justice, among 11 other Judges. At the time of writing, however, it only seats ten judges: seven males and three females. The Supreme Court is seated in Lusaka and has circuits in Kabwe and Ndola.

³ Apart from the formal courts, there are several quasi-judicial bodies, often in the form of tribunals, that preside over specialized disputes. Each tribunal is established by a specific statute and serves a clearly defined purpose. The most well-known are the Lands Tribunal, the Liquor Licencing Tribunal, the Urban and Regional Planning Tribunal, the Tax Appeals Tribunal, and the Competition and Consumer Protection Tribunal.

As an appellate court, the Supreme Court hears appeals from both the High Court (in Bill of Rights matters) and the Court of Appeal. The Supreme Court and the Constitutional Court (described below) rank equivalently.

Constitutional Court

Following a protracted drafting process, the Zambian Constitution was extensively amended in 2016. One of the judicial institutions introduced by the amended Constitution is the Constitutional Court. This Court is comprised of 13 judges, including the President and Deputy President of the Court (Article 127). However, at the time of writing, the Court only seated eight judges (three male and five female judges). The Court has original and final jurisdiction to hear any matter relating to (i) the interpretation of the Constitution, (ii) violation or contravention of the Constitution, (iii) the election of the President and Vice President, (iv) appeals relating to the election of members of parliament, and (v) any matter about the Court's jurisdiction (Article 128). When a constitutional matter within the jurisdiction of the Constitutional Court arises in any other court, that court is required to refer that matter to the Constitutional Court (Article 128(2)). A decision of the Constitutional Court is final and not appealable to the Supreme Court (Article 128(4)).

The Constitutional Court does not have jurisdiction to enforce the Bill of Rights in the Constitution, as the Bill of Rights vests jurisdiction over its enforcement in the High and Supreme Courts. This was an unintended consequence arising from the way the Constitution was amended: The draft Constitution clothed the Constitutional Court with jurisdiction over the proposed Bill, which was expanded to include economic, social, and cultural rights. While the rest of the Constitution was amended through an Act of Parliament, the draft Bill of Rights was subjected to a referendum in August 2016, in which it was ultimately rejected.

Court of Appeal

The Court of Appeal was established in 2016 under Article 130 of the Constitution. It is an appellate Court perched between the High Court and the Supreme Court. Pursuant to Section 4 of the superior courts (Number of Judges) Act No. 9 of 2016, the Court of Appeal has an establishment of 19 judges, including the Judge President and Deputy Judge President of the Court. However, the court currently only seats 12 judges (six males and six females).

High Court

The High Court is established under Article 133 of the Constitution. It is comprised of a general division and four specialized divisions, namely, the Industrial Relations Court, the Commercial Court, the Family and Children's Court, and the newly established Economic and Financial Crimes Court.

The High Court has an establishment of 60 judges, with 51 judges currently sitting of which 27 are female and 24 are male. According to Article 134 of the Constitution, and subject to Article 128, the High Court has unlimited and original jurisdiction in civil and criminal matters; unlike the Subordinate and Local Courts, which have geographic and monetary jurisdiction limits, the High Court can hear any case within Zambia. Furthermore, it can impose any penalty allowable under the law. The High Court hears appeals from the Subordinate Court. This court currently sits in the following towns: Lusaka, Ndola, Livingstone, Kitwe, Kabwe, Mongu, Chipata, Mansa, Kasama, Solwezi, and Mazabuka.

The Subordinate Court

Subordinate Courts are established under Article 120(1)(a) of the Constitution and are governed by the Subordinate Courts Act Cap. 88 of the Laws of Zambia. Section 3 of this Act establishes Subordinate Courts in each District as follows:

- 1) Subordinate Court of the **first class** presided over by a principal resident Magistrate, a senior resident Magistrate, a resident Magistrate, or a Magistrate of the first class.
- 2) Subordinate Court of the **second class** presided over by a Magistrate of the second class.
- 3) Subordinate Court of the **third class** presided over by a Magistrate of the third class.

Despite this distinction in classes, Section 7 of the Act states that Magistrates are of equal power, authority, and jurisdiction.

Regarding criminal sentencing, a Subordinate Court of the first, second or third class may try any offense under the Penal Code, or any other written law. It may also pass a sentence or make any other order authorized by the Penal Code or any other written law subject to the following thresholds (Table 2).

Table 2: Sentencing Thresholds by Rank

Rank	Sentencing Threshold
Senior resident Magistrate	Not exceeding 9 years
Resident Magistrate	Not exceeding 7 years
First class	Not exceeding 5 years
Second and third class	Not exceeding 3 years

Source: Subordinate Court Cap. 88 of the Laws of Zambia.

In civil matters, the following thresholds in terms of the financial value of the claims have been set by Section 20(1) of the Subordinate Courts (Amendment) Act No. 4 of 2018 (Table 3):

Table 3: Monetary Thresholds by Rank

Rank	Monetary Threshold
Chief resident Magistrate	Not more than K100,000 (US\$5,000)
Principal resident Magistrate	Not more than K90,000 (US\$4,500)
Senior resident Magistrate	Not more than K70,000 (US\$3,500)
Resident Magistrate	Not more than K50,000 (US\$2,500)
Magistrate class 1	Not more than K30,000 (US\$1,500)

Source: Subordinate Court (Amendment) Act No. 4 of 2018.

The Subordinate Court operates two specialist fast-track courts in selected towns. These are the gender-based violence (GBV) and the road traffic fast-track courts. The GBV courts, designed to enhance access to justice for GBV victims, are relatively new and few: The first fast-track GBV court was launched in 2016 under the Kabwe Subordinate Court. Subsequently, five more were launched in Lusaka, Mongu, Chipata, Choma, and Ndola, bringing the total to six. Only one road traffic fast-track court exists so far. It was launched in 2013 and is located in Lusaka. These fast-track courts do not operate under a separate legal framework; rather, they are governed by the same laws that govern the operations of the Subordinate Court.

Small Claims Court

The Small Claims Court (SCC) is established by Article 120(1)(b) of the Constitution. It is regulated by the Small Claims Court Act Cap. 47 of the Laws of Zambia. The SCC was designed to speedily resolve low-value commercial claims of less than K20,000 (US\$1,000) using less complex court procedures and rules of evidence. As a result, lawyers are barred from representing clients in the SCC, and claimants must appear in person.

The Court is presided over by part-time arbitrators known as Commissioners, who are usually lawyers of at least five years standing at the bar (Sections 6 and 7 of the Act). The Court is free to sit at such times and places as it considers necessary for the speedy resolution of disputes. Currently, the SCC only has a presence in Lusaka, Kitwe, and Ndola.

Local Courts

The Local Courts are established under Article 120(1)(c) of the Constitution and apply African Customary Law. The jurisdiction of the Local Court excludes civil claims (other than matrimonial or inheritance claims up to a certain value), fines beyond a certain value, and probation or imprisonment exceeding two years. The Local Courts Act also excludes Local Courts from adjudicating in matters in which “a person is charged with an offense in consequence of which death is alleged to have occurred or which is punishable by death” (Local Courts Act, 1966).

Section 13 of the Act declares that the Minister of Legal Affairs can confer jurisdiction on the Local Courts to administer written laws, as specified in an order drafted to that effect. Such orders will also specify any restrictions and limitations concerning the penalties that may be imposed by the Local Courts in the relevant circumstances.

3.3. Structure and Management of the Judiciary

The Judiciary is led by the Chief Justice, as the overall administrative head. The Chief Justice’s functions include ensuring that judges perform judicial functions with dignity, propriety, and integrity; establishing procedures to ensure judges independently exercise their judicial authority in accordance with the law, and making rules and providing necessary directions for the efficient and effective administration of the Judiciary (Article 136 of the Constitution).

Under Section 4(1) of the Judiciary Administration Act, the Chief Justice is empowered to establish advisory committees, comprising judges or persons with knowledge of the work of courts and prevailing social conditions. They advise the Chief Justice on matters relating to the administration of the Judiciary. The following is a list of current committees:

- a) Advisory Committee on Court-annexed Mediation and Delay Reduction⁴
- b) Advisory Committee on Training and Continuing Education⁵
- c) Advisory Committee on Gender in Development⁶

⁴ This Committee advises on Alternative Dispute Resolution (ADR) mechanisms, primarily mediation, with the aim of promoting such mechanisms.

⁵ This Committee advises on the training needs of the judiciary.

⁶ This Committee is responsible for advising on gender equality and equity in the judiciary.

- d) Advisory Committee on Court Operations and Administration⁷
- e) Advisory Committee on Establishment and Conditions of Service⁸
- f) Advisory Committee on Administration of Civil and Criminal Justice⁹
- g) Advisory Committee on Budget and Finance¹⁰
- h) Advisory Committee on Public Relations and Information¹¹
- i) Advisory Committee on Infrastructure.¹²

The Constitution creates a Judicial Service Commission (JSC) (Article 219), whose role it is to: (i) constitute offices in the Judicial Service; (ii) make recommendations to the President concerning the appointment of judges; (iii) appoint, confirm, promote, and hear appeals from judicial officers; and (iv) carry out functions provided for in the Constitution, or as prescribed. The members include the chairperson who is appointed by the President, a judge nominated by the Chief Justice, the Attorney General, the Permanent Secretary responsible for public service management, a magistrate nominated by the Chief Justice, a representative of the Law Association nominated by the Association, the Dean of a public law school nominated by the Minister for Justice, and another person appointed by the President. Chapter 4 contains a detailed discussion of the judicial appointment process.

The Constitution also creates a Judicial Complaints Commission (JCC) (Article 236) to enforce the Judicial Code of Conduct. It ensures that judges and judicial officers are held accountable for the performance of their functions. The JCC is empowered to investigate complaints and make recommendations accordingly. Under the Judicial (Code of Conduct) Act, the Judicial Complaints Committee (as it was first called) is comprised of five members who have held or who are qualified to hold high judicial office. The members are appointed by the President, subject to ratification by the National Assembly. Chapter 4 contains a detailed discussion of the JCC’s work.

There are currently 980 adjudicators in the formal court system. These adjudicators are spread among various courts across the country. Table 4 details the geographic presence, gender distribution, mandate, and the number of adjudicators for each court in Zambia.

7 This Committee is responsible for looking into matters that affect the routine operational and administrative needs of the judiciary.
 8 This Committee advises on the staffing needs of the judiciary, as well as the conditions of service of personnel employed by the judiciary.
 9 This Committee oversees the management of civil and criminal cases.
 10 This Committee advises on the funding needs and expenditure of the judiciary.
 11 This Committee advises on the public communications and outreach efforts of the judiciary.
 12 This Committee is responsible for assessing the infrastructure needs of the judiciary.

Table 4: Staff Distribution by Gender and Location

Name of Court	Number of Adjudicators (against establishment)	Male	Female	Mandate	Geographic Presence
Supreme Court	10(13)	7	3	The Supreme Court hears appeals from the Court of Appeal, as well as appeals directly from the High Court concerning the Bill of Rights.	Lusaka, but also sits in Ndola and Kabwe.
Constitutional Court	8(13)	3	5	The Constitutional Court has jurisdiction over the interpretation of the Constitution, except the Bill of Rights. It hears appeals on parliamentary and local government elections.	Lusaka.
Court of Appeal	12(19)	6	6	The Court of Appeal hears appeals from the High Court and quasi-judicial bodies.	Lusaka, but also sits in Ndola and Kabwe.
High Court	51(60)	24	27	The High Court has original and unlimited jurisdiction over civil and criminal matters.	Lusaka, Kitwe, Kabwe, Ndola, and Livingstone. In 2022, the Hon. Chief Justice appointed resident judges to Solwezi, Mongu, Chipata, Kasama, and Mansa. Judges for Chinsali and Mazabuka had yet to be appointed.
Subordinate Court	223 (no known establishment)	139	84	The Subordinate Court has broad jurisdiction over criminal and civil matters.	All the districts that existed prior to 2011.
Small Claims Court	30 (no known establishment)	17	13	The Small Claims Court has jurisdiction in civil matters where claims do not exceed K20,000 (US\$1,000).	Lusaka, Ndola and Kitwe.
Local Court	646 (1143)	400	246	The Local Court has jurisdiction over customary law and minor criminal offenses.	In all the districts of the country.

Source: Constitution of Zambia (Amendment) Act No. 2 of 2016; Superior Courts (Number of Judges) Act No. 9 of 2016; High Court Act Cap. 27 of the Laws of Zambia; Subordinate Court Cap. 88 of the Laws of Zambia; Local Court Act Cap. 29 of the Laws of Zambia; Small Claims Court Act Cap. 47 of the Laws of Zambia.

3.4. Interface between the Judiciary and the Ministry of Justice

The Zambian judiciary began as a department under the MoJ. However, it is now an independent arm of the government. Despite its autonomy, the Judiciary and the MoJ closely interface with one another. For example, the MoJ represents the Judiciary in both the Cabinet and Parliament. In both forums, it is the MoJ that presents and justifies proposed judiciary budgets. When questions are asked about the Judiciary in Parliament, the MoJ speaks on behalf of the Judiciary. In the case of law reforms touching on the Judiciary, the MoJ navigates the proposed reforms through both the Cabinet and Parliament. Thus, from this perspective, the Judiciary is a client institution of the MoJ.

Much like the Judiciary, the MoJ has the broad mandate to facilitate the administration of justice and promote the observance of the rule of law. The mission statement of the MoJ is “to provide legal services, facilitate the dispensation of justice, and promote good governance mechanisms” (MoJ website 2022).

The MoJ also provides strategic and policy direction to the following Statutory Bodies/Institutions:

- Compensation Fund Committee
- Council of Law Reporting
- Judicial Complaints Commission
- Legal Aid Board
- National Prosecutions Authority
- Zambia Institute of Advanced Legal Education
- Zambia Law Development Commission.

Of the above institutions, three are extremely important to the institutional organization of the judicial system, as they interface with the Judiciary on a regular basis. These are the National Prosecution Authority (NPA), the Legal Aid Board (LAB), and the JCC.

The NPA is established by the National Prosecutions Authority Act of 2010. It is led by the Director of Public Prosecution (DPP), whose appointment and functions are provided for under the Constitution (Article 180). The NPA’s central mandate is the prosecution of all criminal matters referred by the various investigative wings in Zambia. The NPA has offices in all the provincial headquarters of the country.

The LAB provides legal services (including representation in courts of law) to those with limited means. It generally delivers legal aid through the public defender model; that is, it employs its own lawyers and assigns them to cases as they arise. The LAB is established under the Legal Aid Act No. 1 of 2021. This Act has broadened the role of LAB by according its supervisory and regulatory responsibilities over CSOs that provide legal services, such as paralegal services. These organizations are required to be registered and licensed by the LAB, and to operate under its general guidance. The LAB also has offices in all the provincial headquarters of the country.

As noted above, the JCC enforces the Judicial Code of Conduct and receives and investigates complaints against judicial officers. In terms of geographic coverage, the JCC's physical presence is limited to Lusaka alone. However, complainants in other parts of the country can be lodged with the JCC through the offices of District Commissioners.

3.5. Conclusion

This chapter has provided an overview of Zambia's court system, tracing the historical development of the judicial sector and describing the structure and management of the Judiciary. Operational and structural gaps within the institutions introduced here are explored in the following sections of this report. For example, deficiencies in the service delivery capacities at each court level are analyzed in detail in chapter four. The consequences of resourcing and functional limitations of justice institutions such as the LAB and the Council of Law Reporting are explored in chapters two and four, highlighting particularly how these limitations contribute to the pernicious access to justice challenges in Zambia. Chapters four and five outline the gaps in the appointment and complaint processes for adjudicative officers, undertaken by the JSC and the JCC, respectively.

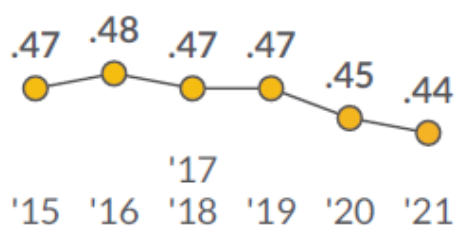
4. ACCESS TO JUSTICE IN ZAMBIA – ISSUES AND CHALLENGES

This chapter provides an overview of component two, pertaining to the access to justice situation in Zambia, highlighting the country’s standing on international indices measuring access to justice. It also details the justice gaps faced by the general population, as well as by historically disadvantaged and vulnerable groups. Key obstacles are identified, including those that impede access generally, as well as those within the formal court system.

4.1. International Perceptions and Benchmarking of Zambia

Despite historically being one of the better performers in Southern Africa vis-à-vis the rule of law and judicial integrity, in recent years, Zambia has recorded downward trends in various international justice indices. The World Justice Project’s Rule of Law Index 2021 indicated that Zambia had slid by two ranks from 2020. From a high score of 0.48 in 2016, Zambia’s score has steadily dropped to 0.44 in 2021, as shown in Figure 2 below.

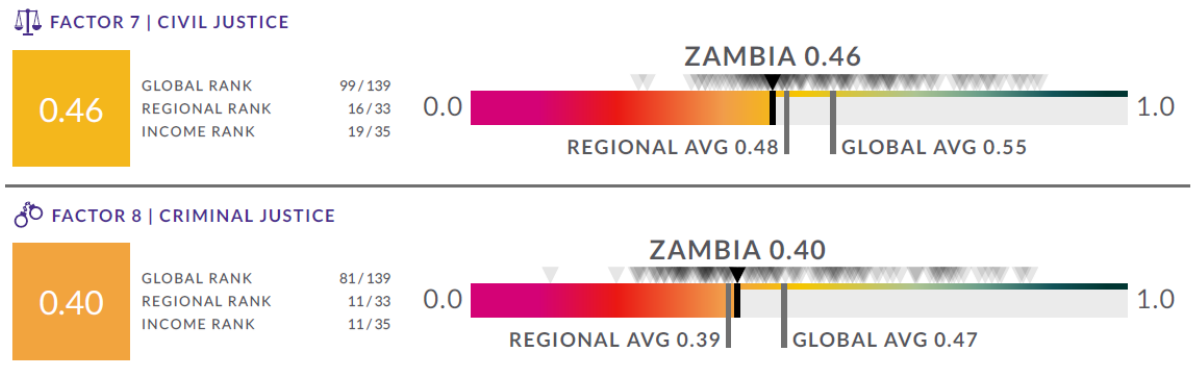
Figure 2: Zambia Overall Score, 2016-2021



Source: World Justice Project (WJP) Rule of Law Index (<https://worldjusticeproject.org/rule-of-law-index/country/2021/Zambia/>).

Zambia ranked below the regional average according to several measures, including effective constraints on government powers and fundamental rights. Zambia was a short distance away from the regional average of 0.48 for civil justice (0.46), and higher than the regional average of 0.39 for criminal justice (0.40) (Figure 3). These measures strongly correlate with access to justice due to their focus on accessibility, affordability, independence, speed, and due process (WJP 2021).

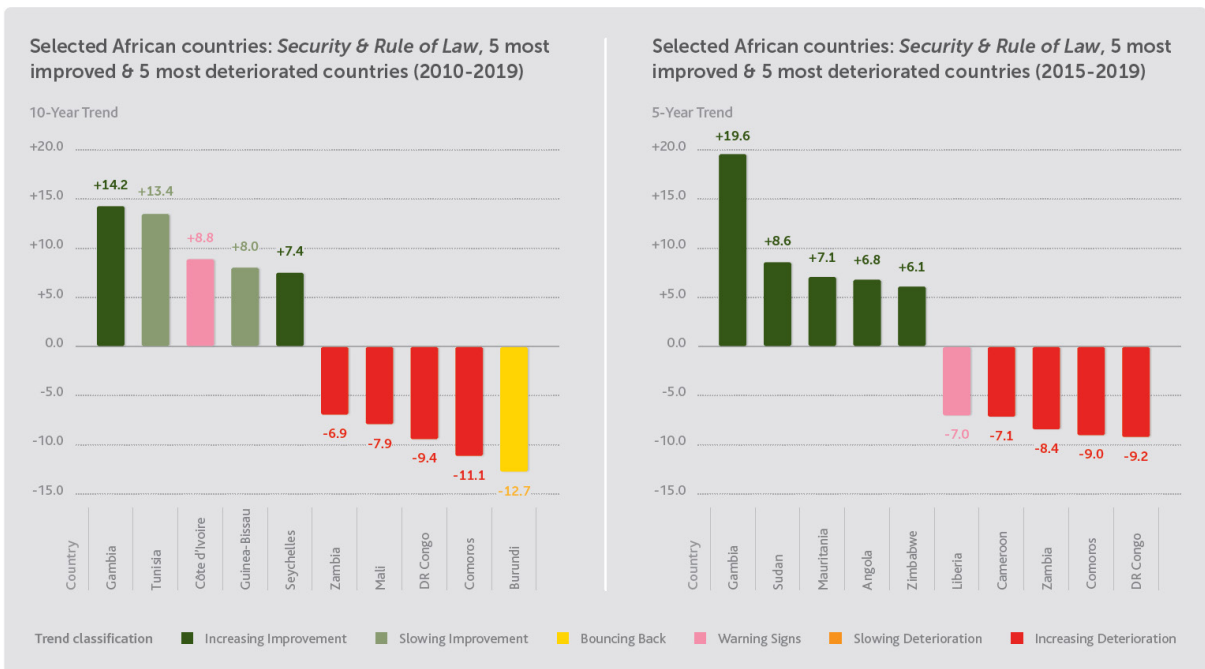
Figure 3: Factor Scores for Zambia, Civil Justice and Criminal Justice, 2021



Source: WJP Rule of Law Index (<https://worldjusticeproject.org/rule-of-law-index/country/2021/Zambia/>)

The 2020 Freedom in the World Report indicated that Zambia had dropped two scores to 52/100 and is currently classified as “partly free” (Figure 4). The report cites concerns with political influence and threats to the Judiciary, as well as due process issues pertaining to lengthy detention for pre-trial detainees, a lack of legal aid, case backlogs, and limited resources (Freedom House 2021). The 2020 Ibrahim Index of African Governance notes that, between 2010-2019, Zambia was one of the five most deteriorated African countries in its measurement of security and the rule of law (Mo Ibrahim Foundation 2020).

Figure 4: Security and the Rule of Law



Source: 2020 Ibrahim Index of African Governance (<https://mo.ibrahim.foundation/sites/default/files/2020-11/2020-index-report.pdf>).

4.2. Access to Justice Challenges

A myriad of financial, cultural, political, geographic, and logistical factors have impacted access to justice in Zambia. Many of these factors are interrelated, as examined in the following sections

Chronic Underfunding of the Judiciary

One of the most serious barriers to the effective administration of justice in Zambia is the chronic underfunding of the judicial sector. In 2019, the Judiciary was allocated the sum of K515,740,938 (US\$27.79 million). Much of these funds were used to cover personnel emoluments, with little left for capital projects and other necessary expenditures (Judiciary Annual Report 2019). Similarly, in 2018, the budget allocation for the Judiciary was K468,958,320 (US\$23.45 million), with K285,078,960 (US\$14.25 million) going to personal emoluments and the balance of K183,879,360 (US\$9.19 million) to recurrent departmental charges (Judicial Annual Report 2018). Again, with little left for capital projects.

This underfunding has led to crippling human resource and infrastructure challenges. Financial, technological, and human resource constraints within the Judiciary have also had cascading social and economic effects on ordinary litigants and defendants interfacing with the judicial system (Banda 2018). These challenges, examined in greater detail in components four and five, are summarized in Box 1.

Box 1: Service Delivery Challenges Resulting from Underfunding of Judicial Sector

- Recruitment, induction, and continuous professional development programs for judges and support staff are hampered.
- Courts countrywide are understaffed both in adjudicators and administrative staff, resulting in low output.
- Inadequate transport limits service delivery in rural outposts, monitoring of revenue collection, running of court errands, and delivery of court documents.
- Maintenance and rehabilitation of court structures cannot be undertaken.
- Reference materials for judges cannot be purchased.
- Required office equipment cannot be purchased.
- The digitization of records cannot be completed.

Source: Judicial Annual Reports (2018 and 2019).

Geographical and Physical Barriers to Courts

Limited court infrastructure throughout Zambia results in a significant geographic barrier to the court system for most people. For example, the statutory establishment for Magistrate Courts in Zambia is three courts (at each of the three different classes) for every district in Zambia (Section 2, Subordinate Courts Act Cap. 88 of the Laws of Zambia), yet there are 116 Districts in Zambia and just 63 Subordinate Courts and 189 sitting magistrates (Judiciary of Zambia, n.d.). This shortfall is indeed striking: For example, 53 districts do not have a magistrate court at all. Whereas most formal courts are in urban centers, 55% of the population resides in rural areas. Zambian courts must be accessed physically; no remote or digital options are currently available. The impact of dire shortages of court infrastructure is explored in detail in components four and five.

Zambia's population stands at approximately 18 million (World Bank 2020). The limited reach of the courts is reflected in data regarding judicial officers per population: In 2020, the rate of Judicial Officers per 100,000 inhabitants in Zambia was 5.70, with more than half of the adjudicators located in the Local Courts of Zambia. Subtracting the Local Court Magistrates, the Judicial Officer per population of 100,000 decreases significantly to a mere 2.09. It appears, nonetheless, that the Zambian rate is comparable compared to other countries in the region: In 2020, the estimate of Judicial Officers per 100,000 inhabitants in Namibia is 36.60; Kenya has a rate of 9.81; Tanzania, 2.06; and Uganda, 0.99.

Declining Public Trust in the Judiciary

Over the past two decades, high-profile allegations of corruption and a lack of confidence in the independence of the Judiciary have undermined public trust in the judiciary system. As highlighted in the Transformation Index:

An independent judiciary exists in principle, but in reality, executive manipulation has compromised the image of the bench. At the same time, rumors of corrupt deals involving members of the Judiciary have called into question judgments on a number of important economic cases. (Bertelsmann Stiftung Transformation Index 2020).

The Afrobarometer interviewed a nationally representative, random, stratified probability sample of 1,200 Zambian adults in 2020 about the Judiciary as perceived perpetrators of corruption. In this context, 78% of respondents believed that some pockets of the Judiciary were corrupt (29% of respondents stated that most or all were corrupt, whereas 49% said some members were corrupt); only 14% believed that “none” of the Judiciary was corrupt (Afrobarometer 2021).

The appointment and disciplinary processes for judges, examined in component four, also indicate the weak independence of the Judiciary from the Executive. These processes lack transparency and have been highly deferential to the President, who is imbued with unfettered discretion to appoint members of the bodies that appoint judges and hear complaints against them.

The newly appointed Chief Justice has acknowledged waning public trust in the Judiciary, noting in his inaugural speech to judiciary staff that “[p]ockets of the Zambian society, including our politicians, civil society organizations, lawyers, clergymen, litigants, and accused persons, have not concealed their shrinking faith in the Zambian Judiciary as a sanctuary for the vindication of those principles which are prized in any true democracy, namely, truth, justice, fair play and equality before the law.” (Chief Justice Malila 2021).

The pernicious impact of a distrusted judiciary is that citizens are less likely to turn to the judicial system to resolve their legal problems. Instead, they are more likely to rely on self-help and other extra-judicial methods (International Bar Association 2014). The judicial system already tends not to be the first point of recourse for those with legal needs (World Justice Project 2019). Continued mistrust of the judicial system due to integrity and independence concerns may further discourage the public from seeking remedies from the formal court system, thereby reducing the relevance of the judiciary, and undermining its access to justice functions.

Court Inefficiency

Court inefficiency in Zambia is a widespread barrier to access to justice. As this problem is well recognized by the Judiciary itself, a “Taskforce on Backlog” was established in 2018 to address the backlog of cases (Judicial Annual Report 2018). The work undertaken by the taskforce is examined more closely in component four.

The effect of court delays on litigants and users of the judicial system is immense. Unwarranted delays can deny justice in the starkest sense, for instance, when a disputant/claimant dies before judgment is rendered. Additionally, long processing times can lead to the destruction of evidence; tampering with witnesses; memory lapses in witnesses; depreciation or diminution in value of the chattel/property in dispute; and the destruction or removal of the subject of the dispute from the jurisdiction. Ultimately, inflation can prevent a claimant from reaping the benefits of litigation even when a judgment is given in his or her favor. For remandees awaiting trial, delays mean excessive time languishing in Zambia’s deeply inadequate correctional facilities. More pervasive are the financial, psychological, and social effects that result from prolonged entanglements with the justice system (World Justice Project 2019).

Economic Barriers to Access to Justice

Amongst the poorest countries in the world, poverty is the most significant and all-encompassing barrier to access to justice in Zambia. The economic challenges in accessing justice are manifested through the high cost of obtaining legal representation, as well as in the failure of the existing legal aid regime to remedy this issue.

Statutorily prescribed legal representation fees are prohibitive, with hourly rates at times exceeding the monthly average income of most Zambians (Statutory Instrument No. 6 of 2017). Under the Statutory Instrument, fees can range from a maximum of K444.30 (US\$22.20) per hour for a legal practitioner of fewer than five years, to a maximum of K1,998.30 (US\$100) per hour for the services of a State Counsel. The prohibitive cost of litigation affects not only indigent persons but also the working poor and middle class. Even for those litigants who might be able to afford the services of a lawyer, often, the net sum of the financial recourse they seek is less than what it would cost to instruct a lawyer to litigate the matter through the formal court system (SAIPAR 2018).

Exacerbating this situation is the insufficiency of state legal aid. There is no general right to legal services in Zambia. Article 18 of the Constitution provides that all accused persons shall “unless legal aid is granted him in accordance with the law enacted by Parliament”, be entitled to “defend himself before the court in person, or at his own expense, by a legal representative of his own choice.” The law referred to in Article 18 is the new Legal Aid Act of 2021, which establishes the LAB, the only body mandated to provide state legal aid to indigent persons.

In 2018, the Southern African Institute of Policy and Research (SAIPAR) surveyed legal aid service providers and found that demand for legal services far outstrips supply. State legal aid is theoretically available in both civil and criminal cases. However, due to the shortage of lawyers at the LAB, there is an almost exclusive focus on criminal cases in the High Court — and neglect of Subordinate Court cases, where the need is immense. In 2018, the LAB had a ratio of one LAB lawyer to 530,000 persons (National Legal Aid Policy 2018). Although a few civil society legal aid providers do exist, most of their work is done in Lusaka (SAIPAR 2018), and these private actors are just as overwhelmed as the LAB.

The LAB lawyers in rural and peri-urban centers are particularly overwhelmed. since they often take on cases from surrounding districts that do not have a legal aid office. As one respondent put it, access to legal aid is extremely limited because lawyers in Zambia are “just a drop” (SAIPAR 2018).

Even where state legal aid is provided, financial barriers remain. Although the LAB operates on a needs basis, it does charge a nominal fee for its services. In a population where poverty is widespread, any kind of fee can be prohibitive. Further, as the LAB staff lacks the time and capacity to verify clients’ financial declarations to fulfill the LAB’s needs-based policy, the LAB could potentially be representing clients who are not as indigent as they claim to be at the expense of truly indigent persons (SAIPAR 2018).

Despite the challenges created by the unaffordability and inaccessibility of legal services, there have been some recent positive developments. A key initiative has been the establishment of Legal Service Units (LSUs) at the Subordinate Courts. They provide legal aid in criminal and civil cases. Managed by paralegals and supervised by the LAB, these LSUs have been effective at speeding up the flow of cases and addressing issues, such as prolonged detention. There are also three other “legal desks” at correctional facilities, police stations, and communities administered by paralegals and overseen by the LAB. As of June 2020, 20 LSUs and desks operate throughout Zambia. Table 5 shows the number of clients served by the LAB, with assistance from the LSUs and paralegals provided by civil society organization (CSO) partners.¹³

Table 5: Legal Aid Statistics

Year	Number of Clients Served by the LAB (including LSUs)	Number of Clients Served by Paralegals (attached to the LAB)	Total Clients Served
2017	8,964	371	9,335
2018	12,071	1,088	13,159
2019	9,229	6,684	15,913
2020	11,384	14,426	25,810
2021	10,027	16,052	26,079

Source: Ministry of Justice.

Inadequate Number and Distribution of Legal Services throughout Zambia

The population of Zambia is approximately 18 million (World Bank 2020). However, there are currently less than 2,000 registered lawyers in Zambia (Law Association of Zambia 2019). Estimates in 2018 showed a ratio of one legal practitioner for 11,300 persons (National Legal Aid Policy 2018). This rate demonstrates that there are fewer legal practitioners to service the public in Zambia as compared with many other sub-Saharan African countries. For example, figures in 2016 showed a ratio of one licensed practicing lawyer to 7,176 persons in the Democratic Republic of Congo, one licensed practicing lawyer to 6,322 persons in Kenya, and one licensed practicing lawyer to 2,700 persons in South Africa (UNODC and UNDP 2016).

Since most legal practitioners reside in urban centers (Law Association of Zambia 2019), the practical implications of this shortage are even more severe. Legal services are highly centralized, and litigants are often required to travel long distances. There is also a financial cost associated with travel, and access to justice is necessarily impacted by the geographic locale of lawyers, courts, and legal aid offices. As one respondent said, “People are very far from where services are being provided. Even if people have the money, if they are too far from cities, they will not take the time out of their lives to access services. Sometimes people are even too far from the nearest police station or courthouse” (SAIPAR 2018). In very remote areas, the situation is even more dire. Indeed, as one respondent noted, “At some points, if you need to visit your client, your only mode of transportation is a canoe”.

¹³ CSOs include UpZambia; the Prison Care and Counselling Association (PRISCCA); the Legal Resource Foundation (LRF); the National Legal Aid Clinic for Women (NLACW); and the Prisons Future Foundation (PFF).

Legal Information Barriers

Zambia’s adult literacy rate has improved over recent years to reach 86.7 percent. However, there remain significant issues in terms of functional legal literacy among Zambians, with continuing low levels of awareness and understanding of legal information and legal systems (Masson and others 2015; National Legal Aid Policy 2018). Legal literacy entails not just the knowledge of one’s legal rights, but also the knowledge about how to enforce those rights and remedies. The exact extent to which people’s legal needs in Zambia are resolved through the formal system, are addressed outside the system, or remain unresolved, is unknown. In this context, there have been 230 legal needs surveys conducted in 108 jurisdictions globally. However, no legal needs surveys have been undertaken in Zambia (WJP Atlas of Legal Needs Surveys 2021). This survey can gather important population-level data about citizens’ experiences of resolving their legal problems. As such, it can also serve to inform targeted programs to improve legal literacy levels.

For the indigent, low visibility of legal aid services remains an issue. As SAIPAR’s 2018 survey of legal aid providers revealed, “People who attend legal aid clinics come because they don’t know where to go or what services are available”. One respondent noted: “Legal aid providers are there, but the visibility is not”. Non-governmental providers of legal aid argued that legal aid is a closely kept secret, and the consensus was that people are not aware that they can access legal aid (SAIPAR 2018).

Low legal literacy is compounded by the archaic and complex language in legal statutes, as well as the unavailability of free legal information. The judiciary does not consistently publish its court judgments, and statutory instruments are difficult to source. Furthermore, the Council of Law Reporting is ineffective in the discharge of its functions. Law reports are not current and are prohibitively expensive (Banda and others 2021). Finally, user-friendly digests of the law are unavailable. As such, the law remains largely inaccessible and unintelligible to most of the Zambian public.

Except for the SCC and the Local Courts which administer African Customary Law, the formal courts are governed by complex rules and procedures. Even though the law allows for self-representation, the net effect of these rules and procedures is that an ordinary unrepresented litigant is, in the main, constructively barred from successfully litigating their case in the court system. Complex procedures have a particularly exclusionary effect on unrepresented litigants seeking justice.

Vulnerable Groups including Women

Vulnerable groups, such as women, prisoners, and persons with disabilities, face disproportionate challenges in accessing justice. The double vulnerabilities and structural injustices that arise because of gender, incarceration, disability, youth, and other factors, render these groups more exposed to an already faulty justice regime. For instance, one study showed that Zambians with “psychosocial and intellectual disabilities in contact with criminal justice services are disadvantaged and discriminated against routinely and systematically” (PAN 2015).

Incarcerated women in Zambia are often unable to access justice regarding the range of legal issues they face while in prison, including “seeking maintenance for themselves and their children [and] seeking remedies for physical and sexual abuse in police custody prior to imprisonment or later in a correctional facility” (Nkhata 2020). Women are also disproportionately impacted by violence. Indeed, Zambia faces some of the highest reported rates of GBV in the world

(Zambia Demographic and Health Survey 2014). Women continue to be under-represented in the formulation of national policies, as well as in political decision-making spheres (NGOCC 2018). This low visibility likely transcends to decision-making in court cases that involve individual women. As noted in access to justice discourse, a woman’s substantive participation in the decision-making of her case must be given consideration, including “[h]er decision to (or not to) resort to alternative dispute settlements or informal systems, [and] her decision to avail of a specific remedy over the other” (OHCHR n.d.). The number of GBV cases withdrawn by women in Zambia remains high, and it remains an open question as to how much sovereign agency women exercise in these withdrawal decisions.

A nuanced understanding of access to justice for women is imperative. While the incarceration of GBV perpetrators may be considered “justice” for the woman, “women may identify other aspirations as their idea of justice for the harm they have experienced: the ability to seek safety through effective protection orders; physical and mental recovery through good quality and accessible health services; and/or the opportunity to seek a divorce and a new life free from the violence of a spouse” (ICJ 2016).

Prisoners, male and female, face substantial challenges. In 2018, the Zambian Human Rights Commission (HRC) interviewed approximately 600 prison inmates and found that a significant number had experienced lengthy delays in the court process, including delays in having their matter placed on the cause list (a list of cases to be heard prepared by a court), and delays in committals, trials, delivery of judgments, sentencing and appeals. For example, 32.5% of interviewees waited more than one year for their matter to be cause listed, and 31.6% indicated significant delays at the trial stage. The report further highlighted that many inmates are left without representation (HRC 2017). Coupled with an overcrowding rate of 321% (with high numbers of pre-trial/remand detainees) in the correctional facilities monitored by the HRC, it is clear that the justice system failures in this area require urgent redress.

Unregulated Traditional Dispute Resolution Mechanisms

The recognition of traditional justice mechanisms in the Constitution is simply a reflection of reality, since most Zambians do not interface with formal courts. Rather, they choose to resolve disputes at the informal level. Therefore, these traditional systems are critical players in the access to justice framework. Indeed, without them, access to dispute resolution forums for most Zambians, particularly the rural poor, would not exist.

These traditional forums do have the potential to increase justice outcomes for rural dwellers, given the informal nature of these courts, their embeddedness within communities, their use of local languages, their application of customary law, and their acceptance by users. These factors make them widely accessible to disputants (Himonga and others 2019). Remedying the shortages of formal courts and lawyers that characterize developing economies necessarily entails supporting informal and flexible justice systems that meet people where they are (UNDP 2006).

Despite their potential advantages, traditional forums in Zambia operate outside the formal justice system and are virtually unregulated. There are no external accountability mechanisms and, because proceedings and decisions are not recorded, it is difficult to ascertain the fairness and consistency of decision-making *ex post facto* using traditional legal research methods. To date, there has been no comprehensive study concerning how these systems operate, procedurally and administratively (Himonga and others 2019). Therefore, there is significant potential for these informal systems to perpetuate injustice with impunity. This is no small issue, since these forums are the only justice forums to which most Zambians have access.

4.3. Conclusion

The component explored in this chapter has provided a situational analysis of access to justice in Zambia, sharing some of the key obstacles that exist in accessing justice both generally, and with specific reference to the Judiciary. The component has shown that pernicious economic and legal information barriers limit justice outcomes for many Zambians. Although these barriers could be mitigated by a robust legal aid system, there is an acute market failure of legal aid services in the country — and demand far outstrips supply. The additional access to justice hurdles caused by structural injustices due to gender, vulnerability, and unregulated traditional justice systems have also been highlighted.

5. PUBLIC EXPENDITURE ANALYSIS IN THE JUDICIAL SECTOR

Prior literature (Palumbo and others 2013) indicates that the performance of the justice sector is associated with, among other things, the amount of financial resources devoted to the sector. This chapter, addressing component three, provides a detailed review and analysis of public financial resource allocations and expenditures in the judiciary sector in Zambia.

5.1. Management of Public Finances in the Judiciary

Reforms, Innovations, and New Developments in Public Financial Management

Strong institutions play a key role in economic development and public financial management (PFM). Evidence indicates that effective public financial management is associated with lower poverty and inequality levels (Chileshe and others 2011).

Cognizant of the crucial role of good public financial management in sustainable economic development and service delivery, Zambia undertook several reforms between 2014 and 2018. These reforms were aimed at enhancing transparency, accountability, and efficiency in the mobilization and utilization of public resources. The main reforms included: (i) ratifying the Planning and Budgeting Bill of 2020; (ii) formulating the National Planning and Budgeting Policy of 2014; (iii) establishing the Treasury Single Account (TSA); (iv) implementing mining sector monitoring systems; (v) streamlining the operations of the Zambia Public Procurement Authority (ZPPA) and government spending; (vi) fortifying internal audit mechanisms; (vii) reviewing and expanding the roles of parliamentary oversight committees; (viii) implementing budgeting and planning reforms, such as the switch from activity-based budgeting to output-based budgeting; and (ix) building capacity in the Auditor General's office to conduct widespread and timely audits.

To improve the management of public resources, the Government has also formulated policies and embodied PFM into its national plans and long-term development aspirations (Vision 2030). Consequently, the Government's commitment to reforming the PFM system is espoused in its development plans and long-term plans (Vision 2030), the Medium-Term Expenditure Frameworks (MTEFs), and other thematic plans. A more PFM-related policy is the National Planning and Budgeting Policy of 2014. Among other things, it seeks to improve integration among policies and budgeting. It also seeks to promote transparency, accountability, and stakeholder fiscal oversight capacity.

The reforms culminated in the establishment of the Integrated Financial Management Information Systems (IFMIS) in 2017, as well as adjustments to the procurement and reporting processes. The IFMIS amalgamates the reporting, budgeting, procurement, and spending processes across all line ministries and government spending agencies to enhance efficiency and promote good public financial governance. The system is targeted to improve expenditure controls and fiscal reporting among Ministries, Provinces, and Spending Agencies (MPSAs). Accountability and transparency in the management of public resources improve service delivery across all sectors of the economy and spur overall economic growth.

The Government also introduced the following innovations to improve PFM:

- **TSA system:** Promotes efficiency in the use of public resources and debt management.

As noted by a key informant, “The non-handling of money in [the] form of cash has hedged against the risk of pilfering. Direct payments through bank accountants with judiciary funds not sitting in a commercial bank anymore, but coming directly through the treasury is a positive change that will allow [for] better accountability”

- **Government Procurement System:** Aims at achieving end-to-end automation of the procurement process to further improve efficiency and transparency.
- **Electronic Fiscal Devices and Tax Invoice Management Systems:** Allows Zambia Revenue Authority (ZRA) offices to monitor the sales of businesses connected to this system virtually in real-time.
- **ZamPass platform:** Harmonizes the tracking of all digital-based transactions made by the Government and citizens of the country.

These reforms and innovations also apply to the Judiciary. Despite the reforms, the country has continued to experience abuse of public resources and associated processes, such as misapplication, misappropriation, and lack of compliance with procurement and reporting processes, as has been consistently revealed by the Auditor General’s reports.

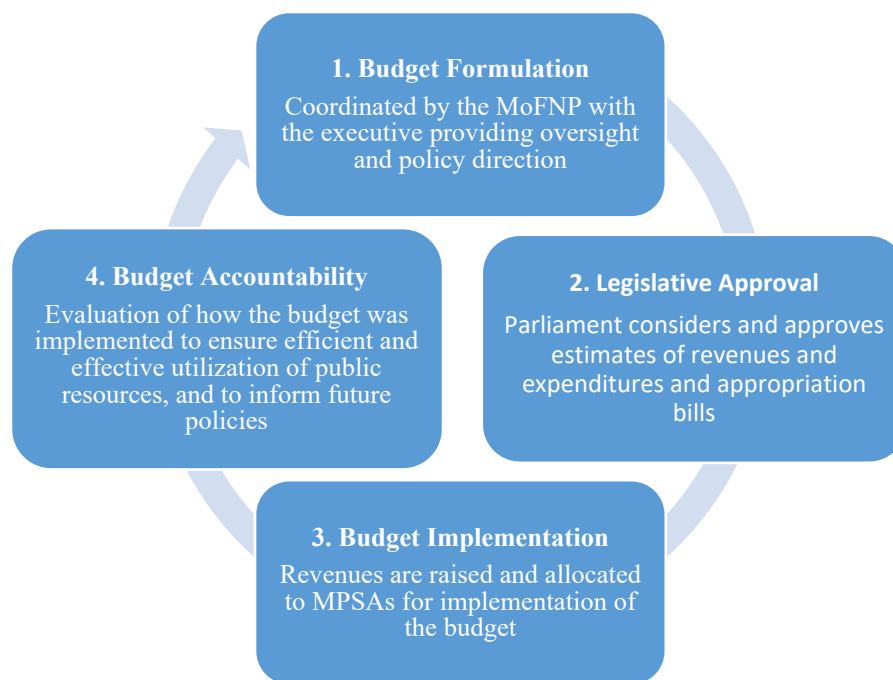
The Role of PFM in enabling a strengthened Judiciary in Zambia

The Zambian government treats justice as a core service on a par with the executive and legislature. It observes that improved rule of law, human rights, and constitutionalism will contribute to the maintenance of order and security, while also creating an enabling environment for both citizens and the business community to conduct their affairs within a functional legal and justice system (MoNDP 2017).

Yet despite Zambia recognizing the critical role of access to justice in the economy, the judiciary sector has been underperforming over the past two decades. The country ranked in the lowest 25% of the World Justice Project Rule of Law Index for 2021, which measures a country’s rule of law performance, and in the bottom 50% of the Sub-Saharan African Region (WJP 2021). A weak justice system characterized by delays in the disposal of cases is a cost on individuals and national resources in the form of court fees, transport, and at times, delayed investments to resolve cases. A global estimate of the cost of annual legal problems shows that countries lose between 0.5 and 3.5% of gross domestic product (GDP) due to litigation (OECD 2019). Within Africa, in Malawi and Madagascar, the estimated loss was 2.8% of the GDP.

There is consensus that delays in the administration of justice are also entrenched in cases that deal with the (mis)management of public resources; delays do not serve as deterrents to committing financial crimes. Until recently, there were no specialized courts to handle financial crimes in Zambia. Strengthening the capacity of the Judiciary to preside over financial crimes, as well as accelerating the speed of court cases, could serve as deterrents to would-be offenders. Additionally, a well-capacitated judiciary should be accompanied by judiciary independence that allows for innovative and creative ways of delivering on its mandate. The judiciary must take the lead in improving the apparent poor institutional linkages and coordination among the justice institutions and other stakeholders (Ngulube 2016).

Figure 5: The Budget Cycle



Source: Illustration based on the budget process in the National Planning and Budgeting Act No. 1 of 2020.

Budgeting Process in the Judiciary

The three branches of government include the Judiciary, the Executive, and the Legislature. Its operations and financing are guided by the Constitution of Zambia and the Judiciary Administration Act No. 23 of 2016. This Act identifies three main sources of financing for the Judiciary. These include the appropriation by Parliament for purposes of the Judiciary; monies paid to the Judiciary by way of court fees, grants, gifts, donations, or bequests; and proceeds from investments, fees, and levies administered by the Judiciary.

The major budget of the Judiciary is appropriated through Parliament as part of the national budgeting. This component of the resource envelope follows the standard national budgeting process, which is highly centralized. The MoFNP leads the budget process in consultations with the Executive and other key stakeholders (Figure 5). The Government runs a three-year rolling budget system through the MTEF. The MoFNP determines the total resource envelope for the medium term, which is derived from the projected domestic revenues and expected external funds, such as loans and grants. After determining the total resource envelope, the MoFNP makes broad allocations to the sectors. The allocations and ceilings are guided by several factors that include national priorities. These are indicated in the national development plans and include poverty reduction, growth, and macroeconomic conditions as presented in the macroeconomic framework.

The MTEF provides the details of respective sector ceilings that are then given to the sectors under a Budget Call Circular. The provided ceilings may be revised at the order of the Executive and, in rare circumstances, after receiving comments from Parliament during the reading of the budget. As in any other MPSA, the MoFNP provides the budget ceilings to the Judiciary. The Judiciary then communicates the budgetary ceilings to the lower levels, including the High Courts, the Subordinate Courts, and the Local Courts. These lower levels formulate budgets based on their projected annual activities by province and tier of the justice delivery system.

Box 2: Imprest-based System

The major expenditure items, such as capital and salaries for judiciary staff, are managed centrally at the Judiciary HQ. The imprest given to provinces and districts is therefore mainly spent on recurrent departmental charges, such as supplies, utilities, and the holding of courts sessions for circuiting justices in the areas where there are no resident judges.

The circuit court sessions absorb most of the provincial imprest. These circuit sessions are often planned and accounted for at the budgeting stage. They are gazetted at the beginning of the year.

Warrant holders consolidate the expected monthly costs of the planned circuit sessions and RDCs for the Local, Subordinate, and High Courts. These are sent to the HQ, which then disburses funds to the provinces.

The imprest is retired under manual accounting to the HQ at the end of month. The information is then entered into the IFMIS.

Estimates show that holding circuiting sessions is almost twice as expensive as sessions with resident judges. This is because of the high cost of per diems and transport for the judicial party.

Despite the elaborate procedures, cash handling leaves the system susceptible to financial leakages. It is expected that the ongoing decentralization of the judiciary by allocating resident High Court judges in provinces will improve operations and lower costs.

The budgets are then consolidated and submitted to the Judiciary headquarters (HQ) for onward submission to the MoFNP. The allocations, however, are often inadequate to meet the preferred needs of the Judiciary.

The Judiciary also collects monies, such as court fees and fines. It can also receive grants, gifts, donations, and bequests. By law, the Judiciary is required to manage these funds within the provisions of the Public Finance Management Act, 2018 (Act No. 1 of 2018). The Act provides for the control and management of public finances, as well as the audit of all public accounts (GRZ, 2017). Except for court fees, all other revenues are remitted in Control 99, the general government account. They then form part of the general government revenues. However, the Judiciary is allowed to retain the court fees as part of its internally generated revenues. The collecting center is allowed to retain 40% of the revenues, and 60% is remitted to the Judiciary HQ for redistribution.

Systems for Effective Budgeting and Reporting in the Judiciary

Zambia has a PFM system that guides the budgeting process, procurement, auditing, monitoring, accounting, financial reporting, and internal controls. The Judiciary Administration Act No. 23 of 2016 is the main piece of legislation that provides for aspects related to judiciary financing.

The Judiciary has evolved from being a department under the Ministry of Justice to an autonomous organ of the state. When it comes to funding and management of resources, Article

123(1) dictates that “the Judiciary shall be a self-accounting institution and shall deal directly with the Ministry responsible for finance in matters relating to its finances.” This entails that the Judiciary should not receive its funding through the intermediation of any ministry or other body; rather, it should deal directly with the Treasury. The rationale behind this is the enhancement of the autonomy of the Judiciary so that it is not, in appearance or fact, under the financial control of any specific ministry. The Constitution further requires that “The Judiciary shall be adequately funded in a financial year to enable it [to] effectively carry out its functions.”

The Chief Administrator of the Judiciary serves as the controlling officer of the financial management of the affairs of the Judiciary (section 5(1)(c) Judiciary Administration Act No. 23 of 2016). The Chief Administrator is required to keep proper books of accounts and other records relating to the accounts of the Judiciary, which should be audited annually (Section 19 Judiciary Administration Act No. 23 of 2016).

There are many processes that promote transparency in the Judiciary. Except for court fees, finances are appropriated through Parliament. The National Assembly Standing Order No. 156 allows the budget and other portfolio committees to scrutinize and conduct budget hearings. Committees may also undertake on-the-spot checks of project implementation.

The Judiciary is subject to the internal audit and control systems, procurement, and periodic external audits of their accounts by established government systems. The budget implementation and reports of the Auditor General are also scrutinized by the Public Accounts Committee of the National Assembly, which can seek any additional information. To enhance control over the preparation, release, and accounting for budgeted expenditures, as well as to strengthen the internal and external audit, the government rolled out the IFMIS to various MPSAs as part of its efforts to improve public financial management.

The rollout of the IFMIS to all levels of the MPSAs can enhance budget commitments and commitment controls. Currently, the Judiciary headquarters is linked to the IFMIS. This has improved the budget and other external financing arrangements. However, there is no interface with the IFMIS at the district and provincial levels, thus leaving the systems to manual accounting processes. The interviews with the Judiciary officials revealed that the government is currently in the process of rolling out the IFMIS to provinces. A strong and accountable PFM is an important foundation for effective service delivery.

As a result of the incomplete rollout of the IFMIS to all levels of the judiciary, the disbursement of funds to the provinces and districts is imprest-based (Box 2). The imprest is used for recurrent expenditures, which include payments for utilities, supplies, and per diems for the circuit sessions of judges and magistrates in jurisdictions where there are no resident justices. It is worth noting that most Subordinate Courts do not have bank accounts, with dire ramifications on PFM in the judiciary.

For ease of management, the Chief Administrator, who is the controlling officer, appoints Sub-warrant holders, often resident magistrates at the station. Sub-warrant holders make all the necessary procurements on behalf of the various tiers of the courts, and funds are disbursed on an imprest basis. The annual gazetting of the circuit sessions for justices makes it possible to plan their costs with more precision, thereby facilitating easier accounting practices by the parties involved.

The reporting of all revenues and expenditures must adhere to the prescribed accounting and reporting standards established in the PFM Act, 2018. These standards conform to the

International Public Sector Accounting Standards (IPSAS) issued by the International Public Sector Accounting Standards Board (IPSASB). The financial statements are prepared using appropriate accounting policies supported by reasonable estimates, in conformity with the cash basis IPSAS. These are the requirements of the PFM Act, 2018, and the Central Government Accounting Policies (CGAPs) of 2020.

The Judiciary has been making strides to strengthen and improve administrative efficiency in order to create greater fiscal space for its operations. One of the key reforms has focused on decentralizing the justice delivery system by establishing High Courts in every province. This will improve the delivery of justice, as well as free up financial resources from the circuit sessions, as the latter are estimated to cost twice as much as resident-based sessions. Therefore, these gains from administrative reforms can be invested in other areas of the Judiciary such as infrastructure. The importance of such efficiency-enhancing innovations cannot be overemphasized, given Zambia's poor fiscal health and threats to global financing exacerbated by the resurgent Covid-19 pandemic and the conflict in Ukraine. Further, the imprest system that relies on manual accounting is susceptible to errors and fraud. In this regard, efforts should be made to extend the IFMIS from the HQ to the districts where expenditures occur. The extension of the IFMIS should also embed some complementary IFMIS functionality that restricts the amount of cash holdings.

5.2. Judiciary Budget and Expenditure Analysis

Economic Context

A thriving economy is essential for governments to invest in various social and economic sectors to enhance development and societal wellbeing. Evidence indicates that investments in social sectors (health, education, social protection, water, and sanitation) and the justice sector are associated with improved wellbeing (Palumbo et al., 2013; Llana-Nozal et al., 2019). The Zambian economy's growth rate averaged 6.6% per year between 2010 to 2014. However, the trajectory decelerated to 2.1% per year, on average, over the period 2016 to 2021. This was underpinned by a severe contraction of 2.8% in 2020 due to the effects of the COVID-19 pandemic. As such, competing domestic spending needs coupled with the volatile external environment had a marked bearing on the judiciary sector, in a manner similar to the effects on most other sectors.

Further, by 2021, the country was experiencing a notable fiscal deficit estimated at 11.7% of GDP (up from 7.9% in 2019 and 10% in 2020). This was mainly the result of the heavy investment infrastructure drive from about 2012 to 2020. Consequently, the external debt stock mounted over time and stood at US\$11.97 billion in 2020, whereas domestic debt was estimated at K199 billion, or US\$7.1 billion, in the same year. Thus, at an estimated 120% of GDP, total public debt was unsustainable, so much so, that the country defaulted on its Eurobond debt service obligations in November 2020. These economic constraints presented – and continue to present – challenges for financing key sectors of the economy, including the Judiciary.

Judiciary Budgetary Allocations

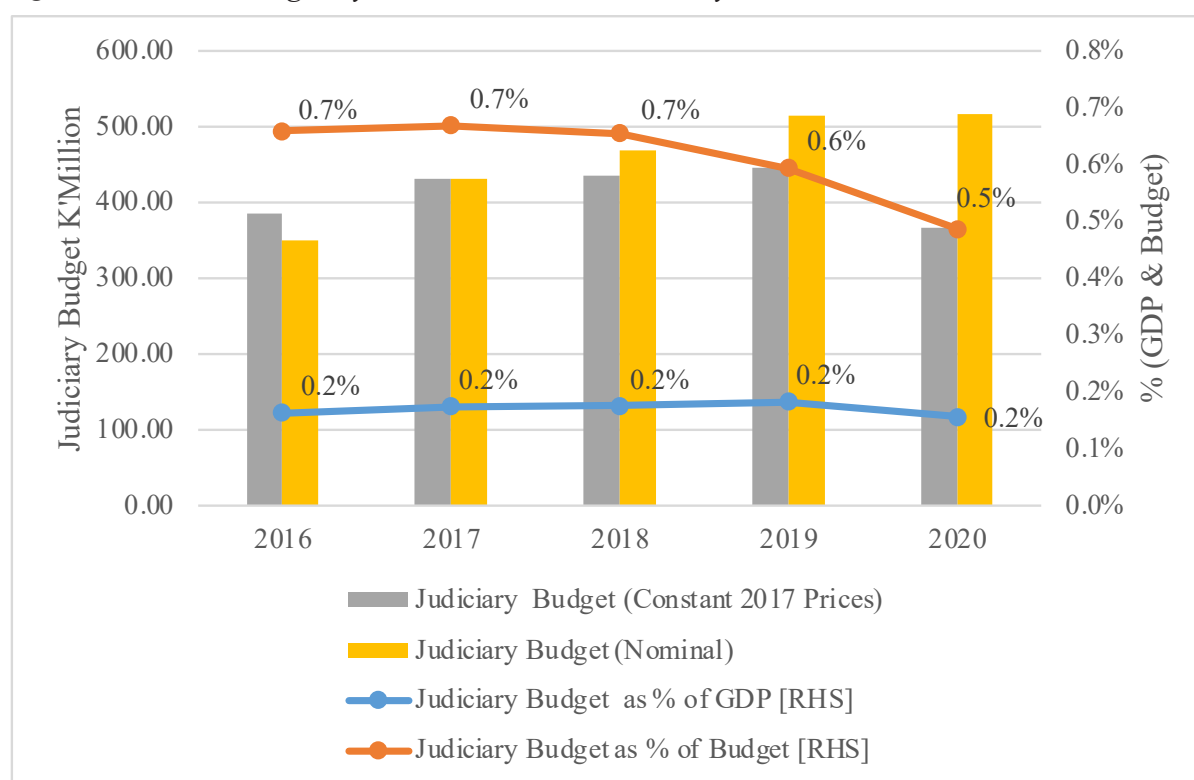
Over the reference period (2016-2020), the judiciary budget showed downward trends both in real terms and as a share of the total budget. In nominal terms, the judiciary budget increased from K350.55 million (US\$17.5 million approx.) in 2016 to K516.35 million (US\$25.81 million approx.) in 2020, representing a 47.3% increase (Figure 5). However, in real terms, the judiciary allocations declined by 4.9% over the same period (that is, from K385.94 million to

K367.20 million). This translates into an annual average growth of 10.5% in nominal terms, and a drop of 0.6% in real terms. Consistent with trends in real terms, the share of the judiciary budget in the total budget sharply declined from 0.7% in 2016 to 0.5% in 2020, suggesting that the overall national budget grew relatively faster than the judiciary budget allocation. Overall, the share of judiciary allocations in the total budget averaged 0.6% per year. Expressed as a percentage of GDP, the results indicate stagnation in the judiciary budget over this period. The share of the judiciary budget in GDP averaged 0.2% per year and stagnated at that rate between 2016 and 2020.

Results from Figure 6 also suggest that the allocation to the Judiciary has not matched the growth of the economy. The declining trend in judiciary budgetary allocations can partially be explained by the increase in debt service and efforts to preserve social spending in health and education, among other priority sectors. Prospectively, in the short- to medium-term, the expenditures for the Judiciary are expected to remain highly constrained by the fiscal challenges emanating mainly from the high external debt and huge debt service obligations.

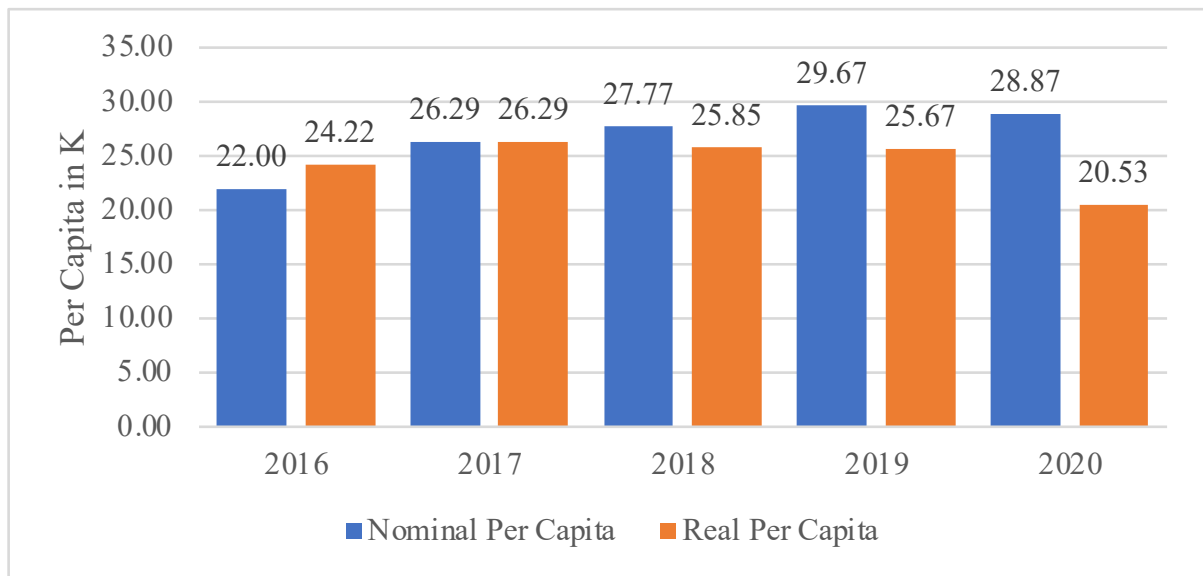
When expressed in per capita terms, results indicate that the judiciary budget has been on a declining trend in real terms (Figure 6). In per capita nominal terms, the judiciary budget grew by 31.22% between 2016 and 2020 (from K22.00 to K28.87), compared to a drop of 15.24% (from K24.22 in 2016 to K20.53 in 2020) in real terms. This means that in real terms, the Government spent an average of K24.51 (US\$1.99) on judiciary services per person per year between 2016 and 2020.

Figure 6: Trends in Budgetary Allocations to the Judiciary



Source: Constructed from the Yellow Books.

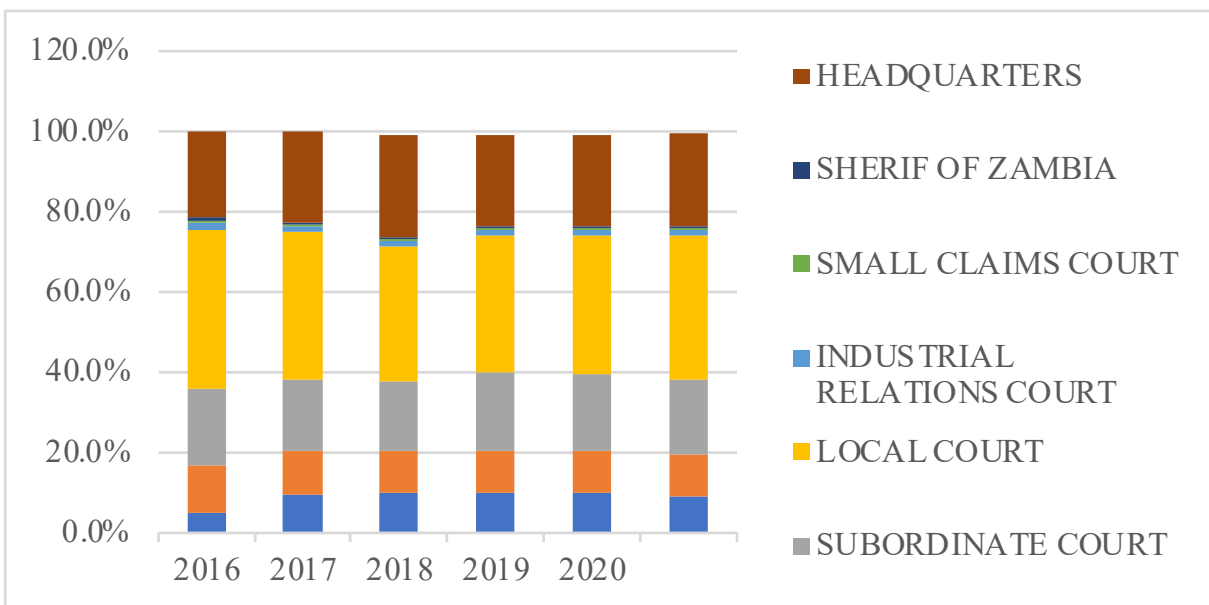
Figure 7: Per Capita Judiciary Allocations



Source: Constructed from the Yellow Books.

Analysis by court level reveals significant variations in budget allocations. The Local Courts accounted for the bulk of the judiciary budget, averaging about 35.8% (Figure 8). By comparison, the Small Claims Court and the Sheriff’s Office placed lowest, with an average of 5% each. These courts (Industrial Relations and Small Claims) tend to convene “on-demand” and are not based on gazetted sessions. It is important to note that the Supreme Court’s share of the judiciary budget has recorded the most significant increase, from 4.8% in 2016 to 10% in 2020.

Figure 8: Judiciary Budget by Court Type



Source: Constructed from the Yellow Books.

A detailed analysis of court-level budget allocations is provided in Table 6. Consistently over the reference period (except in 2016), the Local Courts were allocated the largest proportion of the judiciary budget; this ranged from 29 to 37% of the total judiciary budget. In general, the Headquarters was allocated the second-largest share of the judiciary budget. At the same time, the Sheriff’s Office and Small Claims Court accounted for the lowest proportion of the judiciary allocations.

PUBLIC EXPENDITURE ANALYSIS IN THE JUDICIAL SECTOR

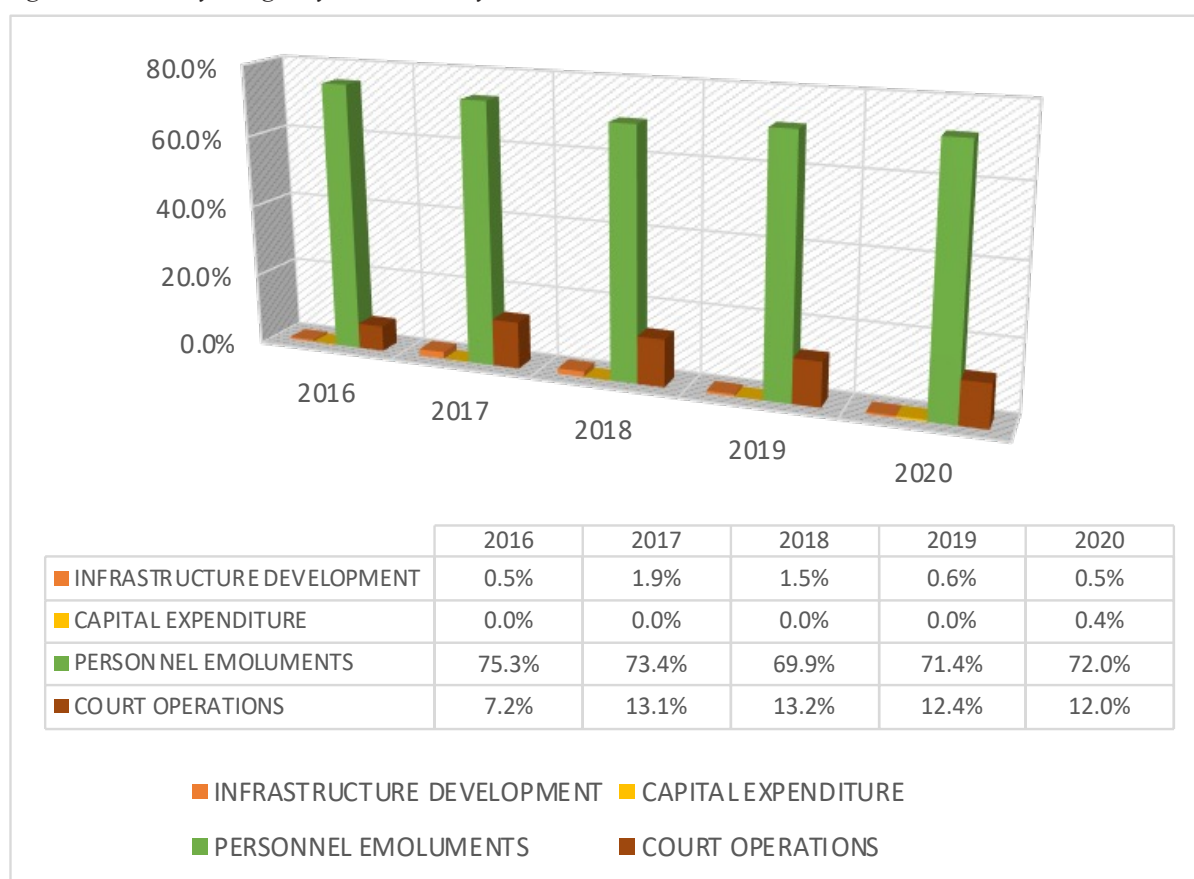
Table 6: Judiciary Budget Allocations (by Judiciary Spending Agent)

	2016		2017		2018		2019		2020	
	K	% of total	K	% of total	K	% of total	K	% of total	K	% of total
Headquarters	168,851,544	35%	78,723,440	18%	101,311,870	22%	99,045,136	19%	99,428,800	19%
Supreme Court	43,687,440	9%	39,182,710	9%	47,050,930	10%	51,963,106	10%	51,795,297	10%
Constitutional Court	0	0%	10,252,938	2%	10,302,930	2%	10,495,520	2%	10,431,489	2%
Court of Appeal	0	0%	10,383,786	2%	10,535,340	2%	10,740,466	2%	10,693,135	2%
High Courts	55,397,125	11%	47,530,355	11%	52,239,180	11%	52,414,527	10%	52,277,430	10%
Industrial Relations Court	5,917,637	1%	5,956,870	1%	5,961,870	1%	6,609,936	1%	6,600,067	1%
Subordinate Courts	66,827,691	14%	76,280,379	18%	98,551,103	21%	100,543,326	19%	115,570,769	22%
Small Claims	2,148,294	0%	2,293,862	1%	2,303,870	0%	2,458,239	0%	2,454,643	0%
Local Courts	138,669,904	29%	158,548,731	37%	132,445,600	29%	179,108,693	35%	164,731,274	32%
Sheriff Office	2,198,102	0%	2,137,694	0%	2,137,690	0%	2,361,989	0%	2,363,400	0%
Total	483,697,737	100%	431,292,782	100%	462,840,383	100%	515,740,938	100%	516,346,304	100%

Source: Constructed from Judiciary sources.

The bulk of the Judiciary resources was allocated to personnel emoluments. Between 2016 and 2020, personnel emoluments accounted for an average of 72.4% of the judiciary budget (Figure 9). Court operations placed a distant second, accounting for an average of 11.6% of the judiciary budget. Judiciary expenditures on infrastructure and capital projects were negligible between 2016 and 2020: infrastructure development and capital averaged 1% and 0.1% of the judiciary budget, respectively, over the reference period. It should also be noted that up until 2020, the share of capital expenditures in the judiciary budget was 0 percent. These expenditure patterns suggest that the Judiciary has insufficient resources to invest in infrastructure and facilities to improve access to justice services. While other categories recorded some marginal increases, the share of personnel emoluments in the judiciary budget saw a slight decline from 2016 to 2020, with the sharpest decline occurring between 2017 and 2019. Judiciary spending on staff development and training is also inadequate (Table 9). These funding deficiencies also have implications for access to justice in the country.

Figure 9: Judiciary Budgetary Allocations by Function



Source: Constructed from information from the Judiciary and the MoFNP.

Financing Arrangements and Resource Adequacy at the Court Level

The overreliance of the Judiciary on government and internally generated revenues makes it vulnerable to exogenous shocks that may affect overall government revenues. Table 7 presents the share of budgetary releases, that is, the percentage difference between what is budgeted for on a particular line item and what is released to the line item. The table shows that personnel emoluments (PEs) are cushioned from any government revenue shortfalls. For all the selected years under review, these costs were fully met.

It is also important to note the disbursement of PEs is made through the Payroll Management Establishment and Control (PEMEC) system,¹⁴ and does not go through the Judiciary. Yet, although PEs were adequately met, capital expenditures were rarely released by the Government to the Judiciary. Only 5% of the total capital expenditures were released in 2019, and 90.9% were released in 2020. The other expenditure items were funded by at least 99%, which suggests minimal budget credibility. However, RDCs were funded below 80% in 2015 and 2019.

Table 7: Budgetary Releases by Function (% of total budget)

	2015	2019	2020
Personnel emoluments	100	100	100
Fuel	-	92.55	99.58
Grants	100	90.5	100
Capital	0	5	90.9
Rentals	100	99.9	100
Court circuits	100	99.8	99.9
RDCs	79.1	77.19	99.9

Source: Constructed from Judiciary administrative data.

Table 8 extends this analysis to court-level resource availability. The data reveals that the Judiciary did not receive, on average, 6.4% of its total budget between 2016 and 2020. Results also suggest significant volatility in funding disbursements. The Subordinate Courts and the High Courts have been the worst hit by the chronic underfunding. The Headquarters, Sheriff's Office, and the Small Claims Court were also negatively affected. The Subordinate Courts did not receive, on average, 10% of their allocations over the review period. This deficit possibly arose from the slow release of infrastructure budgets, as well as the competing expenditure needs of the circuit sessions.

Table 8: Share of Undisbursed Budget

	2016	2017	2018	2019	2020
Headquarters	42.4	1.9	19.8	18.2	4.5
Supreme Court	0.1	-3.3	2.8	4.4	3.1
Constitutional Court		0.0	1.9	1.1	0.8
Court of Appeal		0.0	8.5	0.9	0.8
High Courts	19.9	5.0	2.8	7.9	7.0
Subordinate Courts	1.4	5.8	19.3	9.5	18.2
Small Claims Courts	0.4	4.8	2.6	12.4	8.2
Local Courts	0.7	6.1	0.5	1.1	-7.6
Sheriff's Office	2.6	6.0	2.7	15.5	10.4
Industrial Relations Courts	0.9	5.2	2.5	13.3	8.9
Average	8.6	3.2	6.3	8.4	5.4

Source: Constructed from Judiciary administrative data.

Interviews with judiciary officials indicated that the budgetary releases in the form of current expenditures were sufficient to enable them to undertake their operations. However, the respondents also observed that few resources were invested in infrastructure, thus limiting the extent to which justice can be delivered. For example, when judges are on circuits, Subordinate Courts usually must suspend their hearing and seating to create room for circuits, due to inadequate infrastructure. In some cases, magistrates rarely go on the circuits because of a lack of transport, public funding, and accommodations (Mali, 2019).

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PEMEC is the system used by the Ministry of Finance and National Planning to disburse salaries and other payroll expenditures.

The sector suffers from a considerable financing gap, as evidenced by continuous reporting in the Judicial Annual Reports (JARs). All the reports reviewed indicate that the Judiciary has suffered from underfunding over the review period. Inadequate and erratic funding, weak ICT equipment, and inadequate courts and housing infrastructure are cited as significant constraints to the delivery of justice in the 2021 to 2026 judiciary strategic plans. Despite acknowledging the colossal infrastructure challenges and underfunding, the Judiciary does not have costed plans, thereby making it difficult to estimate the funding gap.

Main Sources of Financing for the Judiciary Sector

Table 9 shows that total expenditures for the Judiciary increased from K409.03 million (US\$20.45 million) in 2016 to K452.54 million (US\$22.63 million) in 2019. The main sources of judiciary financing include the Recurrent Developmental Charges (RDCs), court fees, library services, and a grant from the JSC. The results indicate that the Judiciary relies heavily on governmental funding. The parliamentary appropriation through the RDCs contributed 97.2% of the judicial funding in 2016. This marginally declined to an average of 95% between 2017 and 2019. This financial dependence on governmental funding can undermine judiciary independence and adversely impact service delivery. As KAS (2020) points out, “the executive branches have been reported to exploit their budgetary allocation powers as a weapon to cow the Judiciary to tow certain positions in the exercise of their judicial authority.”

Although no country has entirely resolved the question of financial autonomy of the judicial branch, various reform attempts have been made across jurisdictions. Countries such as Ukraine and Lesotho pushed reforms to have separate bodies administer their judicial budgets. Zambia can draw inspiration from such reform efforts. As such, it may wish to consider establishing a commission to superintend the judiciary budget. For this budgetary autonomy to work, it should be accompanied by professional management. Further, best practices indicate that judiciaries must take a more active role in presenting the budget to the legislature; in Zambia, the MoJ presents the budget on behalf of the Judiciary.

Another way to promote judicial independence is to constitutionally guarantee the Judiciary a share of the national budget. Countries such as Costa Rica and El Salvador have made it a constitutional requirement for their governments to guarantee a fixed share of the national budget to the Judiciary. For instance, Costa Rica and El Salvador have set aside 6% of their national budgets for the judicial sector (USAID 2002). However, Zambia allocates, on average, a paltry 0.6% of its national budget to the Judiciary.

Table 9: Sources of Judiciary Financing (K millions, %)

	2016	%	2017	%	2018	%	2019	%
Court Fees	10.14	2.48	16.08	3.77	17.54	3.96	19.70	4.35
Library Services	0.15	0.04	0.30	0.07	0.34	0.08	0.24	0.05
Judicial Service Commission	1.38	0.34	2.28	0.53	2.41	0.54	3.10	0.68
Recurrent Developmental Charges	397.37	97.15	408.15	95.63	422.70	95.42	429.50	94.91
Total (K millions)	409.03	100.00	426.82	100.00	442.99	100.00	452.54	100.00

Source: Constructed from Judiciary administrative data.

The internally generated resources accounted for the remainder of the funds. The core internal source was the court fees. In addition, the Judiciary received an average of 0.4% of its revenues from the Judicial Service Commission. During the review period, the Judiciary had no off- or on-budget support from cooperating partners.

The judiciary's disaggregated budgetary expenditures are presented in Table 10. Salaries and wages under the personnel emoluments category comprise the largest share of the judiciary budget, accounting for between 48.1 and 63.7% of the total. Arguably, the judiciary budgetary priorities reside in personnel emoluments to incentivize and retain staff. Staff training and infrastructure development generally accounted for relatively meager proportions of the total budget.

Table 10: Judiciary Budget Allocations (by judiciary spending agent)

Category	2016		2017		2018		2019		2020	
	K	% of total	K	% of total	K	% of total	K	% of total	K	% of total
Personnel Emoluments										
Salaries /wages	232,867,126	48.1%	272,930,605	63.3%	278,960,570	60.3%	316,053,447	61.3%	328,943,734	63.7%
Other Personal Emoluments	2,723,374	0.6%	414,638	0.1%	18,144,245	3.9%	8,408,016	1.6%	6,033,875	1.2%
Judges' Fuel	68,936,506	14.3%	43,456,848	10.1%	42,610,497	9.2%	52,092,103	10.1%	42,610,500	8.3%
Staff Training and Professional Development										
Grants	2,041,670	0.4%	129,010	0.0%	129,010	0.0%	59,203	0.0%	48,235	0.0%
Capital Projects										
Infrastructure Development	66,461,835	13.7%	8,000	0.0%	7,000	0.0%	3,212,300	0.6%	2,617,006	0.5%
Rentals for Adjudicators and Buildings	23,237,181	4.8%	24,130,889	5.6%	24,130,889	5.2%	47,083,988	9.1%	46,963,988	9.1%
Court Sessions and Court Circuit										
	34,906,691	7.2%	56,461,275	13.1%	62,107,513	13.4%	63,835,731	12.4%	62,107,580	12.0%
Recurrent Developmental Charges (RDCs)										
	52,523,354	10.9%	31,259,470	7.2%	34,125,659	7.4%	21,803,695	4.2%	23,448,526	4.5%
Judiciary Total	483,697,737	100.0%	431,290,735	100.0%	462,840,383	100.0%	515,740,938	100.0%	516,346,304	100.0%

Source: Constructed from Judiciary administrative data.

Performance in Budget Execution and Financial Management

The judiciary has performed well in terms of budget execution and variances. Although there was a slight drop in the execution rate between 2017 and 2020, rates remained above 95% and averaged 98% over the review period. The high execution rates suggest that the judiciary budget has minimal budget execution credibility issues (Table 11).

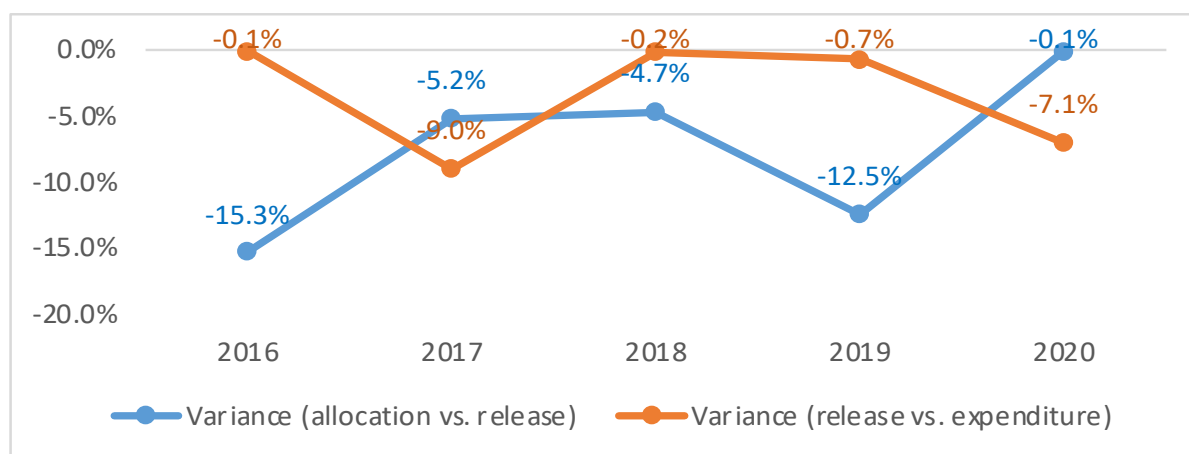
Table 11: Performance of the Judiciary Budget (2017-2020)

Year	Budget Allocation (K million)	Disbursement (K million)	Execution
2017	431.29	428.09	99.26%
2018	468.96	444.52	94.79%
2019	515.74	501.50	97.24%
2020	516.35	515.76	99.89%

Source: Judiciary Annual Reports and MoFNP.

Effectiveness was measured in terms of how close (the variance of) the spending outcome compared to the budget target. This was done at two levels, namely: (a) variances between budget allocations and funds released by the MoFNP to the Judiciary; and (b) variances between funds released and funds spent by the Judiciary. The overall results are presented in Figure 10. Generally, the results show underperformance (negative variances) both in terms of releases from the MoFNP (receipts by the Judiciary) as compared to budget allocations and Judiciary expenditures relative to funds received by the Judiciary. The underperformance regarding judiciary expenditures (ranging from -9 to -0.1 percent) was generally less severe than the underperformance in the MoFNP remittance funds to the Judiciary (ranging from -15.3 to -0.1 percent).

Figure 10: Judiciary Variances



Source: Constructed from Judiciary administrative data.

The variances between the allocations and the MoFNP's release of funds at the spending agent level in the Judiciary are presented in Table 12. All spending agents were underfunded relative to their respective budget allocations throughout 2016-2020. The Local Courts were the only exception, with an overfunding of 7.6% in 2020.

Table 12: Judiciary Variances by Spending Agent (% allocations vs. releases)

	2016	2017	2018	2019	2020
Headquarters	-42.4%	-1.9%	-19.8%	-18.2%	-4.5%
Supreme Court	-0.1%	3.3%	-2.8%	-4.4%	-3.1%
Constitutional Court	0.0%	0.0%	-1.9%	-1.1%	-0.8%
Court of Appeal	0.0%	0.0%	-8.5%	-0.9%	-0.8%
High Courts	-19.9%	-5.0%	-2.8%	-7.9%	-7.0%
Subordinate Courts	-1.4%	-5.8%	-19.3%	-9.5%	-18.2%
Small Claims Courts	-0.4%	-4.8%	-2.6%	-12.4%	-8.2%
Local Courts	-0.7%	-6.1%	-0.5%	-1.1%	7.6%
Sheriff's Office	-2.6%	-6.0%	-2.7%	-15.5%	-10.4%
Industrial Relations Courts	-0.9%	-5.2%	-2.5%	-13.3%	-8.9%

Source: Constructed from the Judiciary administrative data.

5.3. Conclusion

Using a desk review, secondary data sources, and key informant interviews, this component reviewed the evolution and composition of the judiciary sector's public expenditures, as well as the judiciary performance in budget execution and financial management. The results indicate that budget allocations to the judiciary sector have been on a declining trajectory for the past six years.

Further, the Judiciary does not have discretion in the amounts allocated to it. Like any other spending agency, the MoFNP and the executive determine the judiciary budget ceiling. The dominance and importance of the ruling party in the executive make the Judiciary susceptible to the political will of the ruling party. This trend has continued despite the constitutional provision for a financially independent judiciary. Further, although the nominal budgetary allocations have been increasing, in real terms, the allocations to the Judiciary have been on a declining trend for the past six years. This decline in funding is also partially explained by the economic downturn. Addressing these funding gaps will require devising robust, innovative, and sustainable financing mechanisms. Moreover, given Zambia's thin budgetary resource envelope, the financing mechanisms should be combined with efficiency enhancements in resource utilization.

The next two chapters consider the implications of the chronic underfunding of judiciary operations and service delivery.

6. ASSESSMENT OF SERVICE DELIVERY PERFORMANCE

This chapter addresses component four of the report, which assesses service delivery in Zambia’s formal court system across five key indicators, namely, accessibility, efficiency, accountability, independence, and effectiveness (Table 13).

Table 13: Five Key Indicators of Judicial Service Delivery

Indicator	Description
Accessibility	Physical and substantive access to courts.
Efficiency	The speed at which cases move through the court system, considered from quantitative and qualitative perspectives.
Accountability	The extent to which, and the mechanisms through which, courts and judicial officers are answerable for exercising judicial authority “in a just manner” in accordance with Article 118 (1) of the Zambian Constitution.
Independence	The exercise of judicial authority without external influence.
Effectiveness	The judiciary’s ability to discharge its core mandate of resolving disputes in an impartial manner and within a reasonable timeframe.

Source: Authors’ construction from various sources.

6.1. Service Delivery in The Judiciary of Zambia: An Overview

The judiciary encounters significant service delivery challenges at all levels of the court hierarchy. Table 14 provides an overview of judicial performance in the formal courts. The indicators presented include the productivity rate (PR) per judge, the case clearance rate (CCR), and the estimated disposition time (DT). Regarding the CCR, a number higher than 100% indicates an ability to clear backlogs. It also shows that incoming cases have all been disposed of. Numbers lower than 100% indicate a case backlog.¹⁵ Without access to the data needed to calculate actual average disposition times (case filings and completion dates), the estimated disposition time is instead used as a proxy for the time taken for a case to proceed through the court.¹⁶ The PR refers to the number of resolved cases per judge in a year.

Only the Supreme Court, the High Court, and the Small Claims Court demonstrated a consistent ability to clear case backlogs, as reflected in their CCRs over the two years under review (2019 and 2020). Productivity averaged approximately 60% across all courts, with a severe drop in the Court of Appeal, whose productivity levels fell to 18.2% in 2020. Estimated disposition times are also concerning. Although the superior courts (except the Court of Appeal) have been largely able to dispose of cases within a year, in the lower courts, disposal times are far from ideal. Indeed, there have been increases in disposition times in the Subordinate Courts, the Small Claims Court, and the Local Courts. As explained later, the lower courts should be able to dispose of matters in much shorter time frames.

¹⁵ Case clearance rate calculation (Resolved cases in a period/incoming cases in a period) x 100.

¹⁶ Estimated case disposition calculation: (Number of unresolved cases at the end of a period / Number of resolved cases in a period) x 365.

Table 14: Summary of Performance for All Zambian Courts

Court Level	Year	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
Supreme Court	2019	386	77	318	145	68.7	413.0	166.4
Supreme Court	2020	145	226	282	89	76.0	124.8	115.2
Constitutional Court	2019	17	21	21	17	55.3	100.0	295.5
Constitutional Court	2020	18	25	22	21	51.2	88.0	348.4
Court of Appeal	2019	337	341	282	396	41.6	82.7	512.6
Court of Appeal	2020	396	478	159	715	18.2	33.3	1641.4
High Court	2019	10544	9445	11620	8369	58.1	123.0	262.9
High Court	2020	8369	7937	9087	7219	55.7	114.5	290.0
Subordinate Court	2019	24148	43949	44343	23754	65.1	100.9	195.5
Subordinate Court	2020	23754	37685	37281	24158	60.7	98.9	236.5
Small Claims Court	2019	2531	3554	4479	1606	73.6	126.0	130.9
Small Claims Court	2020	1606	3077	3130	1553	66.8	101.7	181.1
Local Court	2019	33752	140676	139953	34475	80.2	99.5	89.9
Local Court	2020	34475	145209	129048	50636	71.8	88.9	143.2

Source: Constructed from the 2019 and 2020 Judiciary Annual Reports.

Acute adjudicative shortages are being experienced across all court levels for which there is available data, as shown in Table 15. The impact of judicial shortages will be discussed in greater detail. However, it is a stark indicator that close to half of the judicial positions in the Local Courts remain unfilled.

Table 15: Adjudicative Shortages in Zambia

Department	Positions	Establishment ¹⁷	Actual	Shortage
Supreme Court	Judges	13	10	3
Constitutional Court	Judges	13	8	5
Court of Appeal	Judges	19	12	7
High Court – General	Judges	-	-	-
High Court – Commercial	Judges	-	-	-
High Court – Industrial	Judges	-	-	-
High Court – Overall	Judges	60	51	9
Subordinate Court	Magistrates	248	223	25
Small-Claims Court	Commissioners	-	30	-
Local Court	Magistrates	1143	646	497

Source: Constructed from Judiciary administrative data.

At a broad level, the KIIs revealed that the Judiciary is missing core administrative and managerial capabilities and that this gap adversely impacts the Judiciary's core business of resolving disputes in a timely manner. The increase in the demand for judicial services from an ever-expanding population — balanced against the archetypical nature of courts as slow-grinding, bureaucratic entities — means that the Judiciary has struggled to keep pace with increasing demands.

¹⁷ The establishment for the Superior Courts is set by the Superior Courts (Number of Judges) Act No. 9 of 2016, and the establishment for the Lower Courts was provided by the judiciary. The Act sets an overall number of "60" for the High Court. However, it does not specify how many judges must belong to each division. No establishment figures were provided for the Small Claims Court.

The overarching, glaring issues include a lack of an administrative support system worthy of the size, scope, and importance of this large organization; poor working conditions for support staff; a lack of an internalized vision and strategy to guide the Judiciary and staff; and a lack of a risk management framework. One informant with deep familiarity with all areas of the Judiciary's functioning noted that the institutional challenges of the institution are so great, that an effective understanding of the challenges required a long-term institutional management diagnostic study of the Judiciary. Such a study would systematically review the operational departments of the Judiciary and propose tailored solutions to maximize efficiency and effectiveness.

6.2. Accessibility

Court Infrastructure and Limited Geographical Reach

A key issue affecting Zambian courts is limited court presence throughout the country on an even and equal basis.

Regarding the High Court of Zambia, before the Chief Justice designated resident High Court judges to the five provincial centers of Solwezi, Mongu, Chipata, Kasama, and Mansa¹⁸, the permanent presence of the High Court was restricted to just three provinces, namely, the Lusaka, Copperbelt, and Southern provinces. While the designation of permanent judges to five additional provincial centers will increase access at the general level, access to the specialized divisions of the High Court is still geographically restricted. The Industrial Relations and Family Court divisions are based only in Lusaka, and the Commercial Court is based in Lusaka and Kitwe.

The Subordinate Courts Act provides that every district in Zambia must have a Subordinate Court. However, of the 116 districts, there are only 63 functioning Courts. While the shortfall of 53 Courts across the country is of concern in and of itself, the issue is exacerbated considering the sheer distance between districts. For example, court users in the Milenge district must travel 75 kilometers to reach the closest Subordinate Court in Samfya. This situation is replicated in many districts across the country.

From an access perspective, the Local Courts are of critical importance. Local Courts permeate rural communities and provide localized justice. Their use of local languages and simplified court procedures, their application of African Customary Law, and the barring of lawyers should make these courts the most accessible in the formal court system. However, although there are 531 Local Courts in Zambia, only 441 of these courts are operational or partially operational. Informants revealed that if all 531 Local Courts were operational, the geographic reach would be sufficient to meet the justice needs of the local populations.

Table 16 shows the number of Local Courts that require construction or rehabilitation in each province. Many Local Courts are severely dilapidated and are currently unusable. Many do not have running water, functioning toilets, or electricity, and some courts have been closed by health inspectors. Communities without functioning Local Courts must walk as far as 10 km to access Local Courts in other communities.

18 This devolution was announced on February 7, 2022.

Table 16: Rehabilitation Needs of Local Courts

Province	Require Constructing	Require Rehabilitation
Lusaka	12	7
Central	7	13
Muchinga	7	10
Copperbelt	5	30
Northern	13	14
Northwestern	18	17
Luapula	8	26
Eastern	20	15
Southern	13	13
Western	18	13

Source: Constructed from Judiciary administrative data.

The Small Claims Court has improved access for litigants with small monetary claims (up to K20,000 or US\$1000 approx.). However, its geographical reach is limited to Lusaka, Ndola, and Kitwe. Informants revealed that since the qualified legal practitioners who staff these courts on a part-time basis are concentrated in urban centers, extending the court to remote areas where there are no legal practitioners is not feasible. A lack of resources was cited as the key constraint that prevents the hiring of full-time commissioners to service courts in more remote areas.

The GBV courts are a good example of how access to justice can be increased when courts devolve to areas outside the capital city. The GBV fast-track court operates stand-alone courts in Choma, Ndola, Chipata, Mongu, and Kabwe. These courts are staffed by specialized GBV court Magistrates, and the facilities are child-friendly and GBV-safe. By contrast, in Lusaka, the GBV court does not have stand-alone facilities. Instead, it is housed in the Lusaka Subordinate Court, where only 12 courtrooms must be shared between 24 magistrates. A lack of transportation money to the Subordinate Court from areas of Lusaka's sprawling metropolis, such as Matero and Chawama, also means that, at times, parties are unable to attend court.

It is expected that GBV courts will be established in Solwezi, Chinsali, Kasama, and Mansa. This represents an important development in terms of increasing access to the GBV courts initiative throughout Zambia (National Assembly of Zambia 2021).

Legal Aid

As discussed in component two, there is limited availability of state-sponsored legal aid. Staffed by just 27 legal practitioners and five legal aides/assistants for a population of more than 17 million, and with only 12 offices countrywide, the LAB focuses predominantly on criminal cases in the superior courts (National Legal Aid Policy 2018).¹⁹ This leaves key gaps across court levels.

At the High Court of Zambia, indigent civil litigants are very rarely granted legal aid. Litigation in the superior courts is lengthy, complex, and expensive, requiring legal representation. However, it is inadequate, creating major access issues. Litigants from the lower courts who may have a strong appeal case may not be able to progress their case due to a lack of funds and/or representation.

¹⁹ Due to limited resources, the LAB focuses on providing legal aid to defendants in serious criminal cases since the consequences of a lack of legal representation in these cases are more aggravated.

Similarly, access to legal aid is lacking in the Subordinate Courts. As of June 2020, there were seven Legal Service Units (LSUs) operating at the Subordinate Courts in Lusaka, Livingstone, Choma, Mazabuka, Ndola, Kitwe, and Chingola. In 2018, they provided aid to over 5,200 people. In 2017, the Lusaka LSU provided legal assistance in 24% of all new criminal cases filed (World Justice Project 2019). While informants emphasized the usefulness of LSUs to indigent users, they noted that their effectiveness is limited because they are not staffed by legal practitioners, but rather by legal assistants and paralegals. Further, the LSUs are overwhelmed and are unable to meet the needs of all Subordinate Court users requiring legal aid.

Some specialized courts provide legal assistance. For example, the Clerk of Court at each SCC can help parties prepare their court documentation free of charge. Further, while the SCC proceedings are held in English, a party can request an interpreter. In the GBV court, the clerks of court help complainants apply for protection orders.

Court outreach to provide general legal education can also assist where direct legal representation is lacking. For example, the GBV court Magistrate indicated that GBV court sensitization programs are particularly important, as traditional justice mechanisms are also utilized to resolve GBV disputes. Through these mechanisms, serious cases, including child defilement, are at times not brought before the courts. Instead, negotiated settlements are arranged between families. Education programs can also help the public and traditional leaders understand the work of the GBV Courts in securing just outcomes.

Legal Costs

Despite the high costs of legal representation in Zambia (discussed in section 3.2), there are relatively low court filing fees in lower courts, which enhances accessibility. When compared to the Subordinate Court (K83) and the High Court (K167), the filing fee in the Small Claims Court of K67 is more affordable. Applications to the GBV Courts are free. Local Courts charge a user fee of K33. While the mere existence of a filing fee in the Local Courts could negatively impact access for indigent users, this fee can be waived if hardship is proven.

6.3. Efficiency

Inadequate Courtroom and Office Space

The sharing of courtroom space due to courtroom shortages is found at all court levels. The Constitutional Court does not have its own building and shares courtroom and office space with the Supreme Court and the Commercial Court. The Court of Appeal can only hear civil appeals at its premises, as it has no holding cell. Thus, criminal appeals need to be heard at the Supreme Court (Judiciary Annual Report 2019).

The Lusaka High Court building was built in 1983 with eight courtrooms. Since 1983, the number of judges has increased four-fold, and specialized divisions have been created. At the same time, population and economic activity growth have led to an increased demand for judicial services. All these factors render the High Court building woefully inadequate. Multiple judges share one court, and there is inadequate office space for court clerks, marshals, and other support staff.

While the Commercial Court does have its own premises, it also houses judges from the Constitutional Court and the Industrial Labour Relations Court. This means that 12 judges (seven from the Commercial Court, four from the Constitutional Court, and one from the

Industrial Relations Court) share four courtrooms. According to the Judge-in-Charge of the Commercial Court, this sharing of courtroom space has had a negative impact on the case disposal rate.

Since High Court infrastructure does not exist in five provincial centers, the recent allocation of resident High Court Judges to five provinces with no High Court infrastructure invariably means the sharing of courtroom and office space with Subordinate Courts in these towns. This will no doubt have a negative effect on efficiency (Chief Justice Malila 2022).

Inadequate courtroom and office space is also an issue in all Subordinate Courts (Judiciary Annual Report 2020), and many Subordinate Courts “operate in pre-independence buildings which are too small, dilapidated and not only uncondusive for the dispensation of justice in the modern era but also pose a health risk to courtroom actors” (Mali 2019).

Adjudicative Shortages and High Caseloads

As shown in Table 14, there are dire shortages of adjudicators in all courts. Respondents noted that the Judiciary lacks the financial resources to recruit additional judicial officers. In the superior courts, both the Constitutional Court and the Court of Appeal have shortages, with five vacancies on the Constitutional Court and seven vacancies on the Court of Appeal. In the High Court, there is a shortfall of nine judges (with 51 judges of a statutory establishment of 60).

Judicial officers report being overwhelmed by assigned caseloads. Upon appointment, each new High Court judge is allocated approximately 300 historical files and a further 40 new cases per quarter. While the Industrial Relations Division has just five judges, a total of 739 cases were filed with the Division in 2021. In the Commercial Division, just seven judges were responsible for hearing the 780 cases filed in 2021.

Case Management and ICT Systems

In the Subordinate and Local Courts, case tracking is a key challenge. Tracking and following up on stalling cases to avoid delay is not done systematically, since there are no specific court employees or systems to facilitate this. Registrars can undertake *ad hoc* tracking but must abandon their principal duties to do so. There is also a Court Operations subcommittee that reviews monthly status reports. However, the capacity of this subcommittee is limited, as it comprises only seven people, centrally located in Lusaka, and with the mandate to supervise the entire country.

Across all courts, the lack of a case management IT system and a lack of server space means that all case files are managed manually. Due to the large volume of cases, this invariably leads to inefficiencies. Many court registries are in a state of disarray and case records and files are often lost, causing delay and substantive justice issues.

Respondents across all courts cited the lack of adequate computing facilities and basic operational resources as a cause of delay. As an example, the SCC courts must print its prescribed forms for litigants but photocopying and printing facilities are sometimes out of service or frequently out of toner. Similar issues are found in Local Courts, most of which lack basic computing facilities.

There is limited technology for court reporting at all levels, and the High Court has only two functioning stenographic machines. Judges take notes by hand during hearings. Further, limited server space means that digitization efforts of court records are at a standstill. This means that records are stored manually, which further exacerbates the space problem shared above.

Unmet Training Needs

The lack of appropriate training for adjudicators was noted by all informants. When adjudicative officers begin their careers within the Judiciary, there is often no induction or training to assist them in carrying out this unique and important role, even though they immediately take on high caseloads. Induction and orientation can only be provided sporadically due to funding constraints. Similarly, while many adjudicators play administrative roles, such as “judge-in-charge”, there is no management training available. For example, while litigation in the High Court is theoretically “judge-driven”, in practice, informants revealed that very few judges are adequately trained in litigation management techniques. With rapid changes in substantive law, adjudicators also require ongoing professional development activities.

As for Local Court Magistrates, there is a recent “professionalization” trend, with many magistrates obtaining law degrees to increase prospects of promotion to the Subordinate Court. A study commissioned by the JSC is currently underway to determine the effect of the professionalization on magistrates’ understanding and application of African Customary Law. Depending on the findings of that study, it may be necessary to train Local Court Magistrates in the application of African Customary Law.

Transportation

Lack of transportation at the decentralized level of court operations results in significant delays. For example, while Subordinate Court Magistrates have a legal mandate to visit and inspect places of detention (including police cells), the lack of transportation hampers regular visits. In Luapula province, just two vehicles service the entire province. The situation is not much better in other provinces.

In the Local Courts, transportation challenges feature as well. Because court messengers do not have transportation, they often rely on traditional authorities to reach disputants, leading to delays.

Administration Support

Administrative support for the superior court offices of the Chief Justice, Deputy Chief Justice, and Chief Administrator is largely absent. While these offices hold substantial managerial functions within the Judiciary, these offices operate without the requisite administrative support. For example, assistance for tasks such as drafting and filing is often not available. In the absence of support, these offices largely rely on Registrars, who themselves already have an extremely demanding workload and perform several ancillary tasks including supporting the work of the JSC. While there is a “Director of Court Operations”, there is no staffed directorate, limiting the effectiveness of the office.

6.4. Efficiency at Individual Court Level – Performance Data

This section analyses data from all court levels to contextualize efficiency challenges.

Supreme Court

The Supreme Court presented strong indicators of efficiency. With only one judicial vacancy during 2020, the Supreme Court efficiently disposed of cases and reduced the backlog. All estimated disposition time was less than 365 days. Strikingly, in 2020, the court's disposition time was only five days for a civil matter compared to 143 days in 2019, suggesting great strides in efficiency (Table 17). The CCR for criminal and civil cases in 2019 indicated that the court significantly reduced its backlog (925% for civil cases and 278.7% for criminal cases). Overall productivity was higher in 2019 (70%) than in 2020 (68.7%).

Table 17: Productivity Rate, Clearance Rate, and Disposition Time (Supreme Court)

Year	Case Type	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
2019	Civil	190	16	148	58	71.8	925.0	143
	Criminal	196	61	170	87	66.1	278.7	187
	Overall	386	77	318	145	68.7	413.0%	166
2020	Civil	58	15	72	1	98.6	480.0	5
	Criminal	87	211	210	88	70.5	99.5	153
	Overall	145	226	282	89	76.0	124.8%	115.2

Source: Constructed from Judiciary administrative data

Constitutional Court

While overall the Constitutional Court performed adequately, efficiency dropped slightly between 2019 and 2020. Disposition time increased from 296 days in 2019 to 348 days in 2020, despite still under one year for disposition (Table 18). The Constitutional Court was more productive in 2019 than in 2020 (55.3% compared to 51.2% in 2020). The CCR was 100% in 2019, an indication that the size of the backlog remained the same. In 2020, the CCR reduced to 88.0%, meaning the backlog was higher. A contributing factor to the setback in 2020 was a lack of judges, with six vacancies from an establishment of 13 (over half the judicial positions were unfilled).

Table 18: Productivity Rate, Clearance Rate, and Disposition Time (Constitutional Court)

Year	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
2019	17	21	21	17	55.3	100.0	296
2020	18	25	22	21	51.2	88.0	348

Source: Constructed from Judiciary administrative data

Court of Appeal

For a superior court with key appeal responsibilities, efficiency indicators for the Court of Appeal were concerning, particularly in 2020. As earlier noted, the Court of Appeal is experiencing infrastructure and judicial shortage challenges. These challenges, along with the impact of the COVID-19 pandemic shared in the methodology, are possible contributing factors to the court's inefficiency. Further, the Court of Appeal is relatively new, and respondents revealed that all its judges were recruited from the High Court, and as such, had to complete their High Court cases concomitantly with their commencement of service on the Court of Appeal. Therefore, the

workload of Court of Appeal judges – historical High Court cases plus Court of Appeal matters – could go some way in explaining the poor efficiency indicators. The disposition time was greater than 365 days in both years for civil, criminal, and the entire Court except for criminal cases in 2019 (200 days). Disposition for civil cases in 2020 hit a remarkable 2,048 days per case. The CCR for civil cases dropped significantly from 2019 to 2020 (61.1% to 32.7%), and from 129.9% to 34% for criminal cases. Productivity dropped from 41.6% in 2019 to 18.2% in 2020 (Table 19).

Table 19: Productivity Rate, Clearance Rate, and Disposition Time (Court of Appeal)

Year	Case Type	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
2019	Civil	229	234	143	320	30.9	61.1	817
	Criminal	108	107	139	76	64.7	129.9	200
	Total	337	341	282	396	41.6	82.7	513
2020	Civil	320	275	90	505	15.1	32.7	2048
	Criminal	76	203	69	210	24.7	34.0	1111
	Total	396	478	159	715	18.2	33.3	1641

Source: Constructed from Judiciary administrative data

High Court of Zambia

Informants revealed that case processing inefficiencies and backlog in the High Court have been long-standing problems. At the height of the problem in 2018, the then Chief Justice constituted a “Taskforce on Backlog” consisting of six High Court judges. The brief for the taskforce was to conclude cases that were filed between 1986 and 2015 but were still pending in 2018. The taskforce successfully cleared most of the backlog and disbanded in 2020.

The impact of the taskforce is reflected in Table 20 below. The CCR for civil cases was 133.0% in 2019, showing that the court significantly reduced its backlog. The CCR for civil cases in 2020 was above 100% (but lower than in 2019), an indication that the High Court continued to attenuate the backlog. However, for criminal cases, the CCR was lower than 100% (96.1% in 2019 and 88.4% in 2020), an indication of increased pending cases. Overall, however, the combined backlog reduced over the two years (123% in 2019 and 114.5% in 2020).

According to judicial officers, there has been a significant reduction in disposition times since 2019, with most cases cleared within a year. As for productivity, the High Court was more productive in 2019 than in 2020 (58.1% in 2019 compared to 55.7% in 2020). Informants revealed that the worsening productivity and CCR in 2020 can be explained by the COVID-19 pandemic, which crippled court operations.

Table 20: Productivity Rate, Clearance Rate, and Disposition Time (High Court)

Year	Case Type	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
2019	Civil	8854	6901	9176	6579	58.2	133.0	261.7
	Criminal	1690	2544	2444	1790	57.7	96.1	267.3
	Total	10544	9445	11620	8369	58.1	123.0	262.9
2020	Civil	6579	5317	6770	5126	56.9	127.3	276.4
	Criminal	1790	2620	2317	2093	52.5	88.4	329.7
	Total	8369	7937	9087	7219	55.7	114.5	290.0

Source: Constructed from Judiciary administrative data

Small Claims Court

Designed as a fast-track court for small claims, the Small Claims Court (SCC) dispenses with formal procedures and with the rules of evidence, and bars representation from a lawyer. The Senior Clerk of the SCC in Lusaka informed that the target duration of an SCC case is 60 days. However, as Table 21 shows, SCC cases averaged 131 days in 2019 and 181 days in 2020. Overall, however, the backlog of the SCC declined in both 2019 and 2020.

Informants relayed that the reason for lengthy disposition times is the fact that SCC commissioners work part-time. Respondents also cited the lack of adequate computing and photocopying facilities. Further, a review of a judgment before a panel of three commissioners tends to take a significant amount of time, due to manpower constraints.

Table 21: Productivity Rate, Case Clearance Rate, and Disposition Time (Small Claims Court)

Year	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
2019	2531	3554	4479	1606	73.6	126.0	131
2020	1606	3077	3130	1553	66.8	101.7	181

Source: Constructed from Judiciary administrative data

Subordinate Court

Data from the Subordinate Courts illustrates limited ability to clear existing backlog and prevalence of lengthy proceedings across civil, criminal, GBV, and juvenile matters. Indicators over the two years show a general worsening of efficiency, likely caused by COVID-19 in 2020 and a shortfall of 25 magistrates. Disposition times for civil cases increased from 283 days in 2019 to 336 days in 2020. Criminal cases increased from 155 days in 2019 to 187 days in 2020. Backlog was slightly reduced in 2019 but increased in 2020 (100.9% and 98.9%) (Table 22). Subordinate Courts were more productive in 2019 (65.1%) than in 2020 (60.7%).

For juvenile cases, the estimated days of disposition declined drastically to 104 days in 2020 from 512 days in 2019. The productivity rate almost doubled in 2020 (77.9% against 41.6% in 2019). The CCR was also almost twice as low in 2019 as in 2020.

For GBV matters, disposition times were reduced from 319 days in 2019 to 271 days in 2020. The productivity rate increased from 53.4% in 2019 to 57.4% in 2020, but the backlog increased. As discussed below, GBV fast-track courts are working to address this backlog and inefficiency.

Published research shows the pervasiveness of delay in the Subordinate Courts. A 2019 study recorded court efficiency issues in 130 Subordinate Court sessions over 21 months (Banda, 2019). It found unwarranted delays in 72% of cases. The main reason for delays was a late start to the session (64%), which had a cascading effect on proceedings for the whole day, resulting in a consistent and compounding loss of court time over years. Delays associated with lack of representation were also significant, including that court time is often wasted with magistrates correcting litigants on procedural points.

Table 22: Productivity Rate, Clearance Rate, and Disposition Time (Subordinate Court)

Year	Case Type	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
2019	Civil	10263	14822	14128	10957	56.3	95.3	283
	Criminal	13885	29127	30215	12797	70.2	103.7	155
	Total	24148	43949	44343	23754	65.1	100.9	196
2020	Civil	10957	12776	12352	11381	52.0	96.7	336
	Criminal	12797	24909	24929	12777	66.1	100.1	187
	Total	23754	37685	37281	24158	60.7	98.9	237

Source: Constructed from Judiciary administrative data

Table 23: Productivity Rate, Clearance Rate, and Disposition Time (Subordinate Court – GBV)

Year	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
2019	654	954	858	750	53.4	89.9	319
2020	791	1619	1384	1026	57.4	85.5	271

Source: Constructed from Judiciary administrative data

Table 24: Productivity Rate, Clearance Rate, and Disposition Time (Subordinate Court – Juvenile)

Year	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
2019	191	1870	858	1203	41.6	45.9	512
2020	271	1566	1431	406	77.9	91.4	104

Source: Constructed from Judiciary administrative data

GBV Fast-track Courts

The GBV fast-track courts are efficiently disposing of cases. The six courts have facilitated the disposal of cases within an average of five to 30 days, compared to ordinary Subordinate Courts taking between 12 to 36 months (GRZ-UN Joint Program on GBV Phase II, 2021). An early evaluation of the first two Courts found they contributed to quick disposal and greater efficiency, but also noted a backlog and a lack of adequate courtrooms (Zimbizi et al., 2017).

Local Courts

Informants revealed that most Local Court cases should be resolved in a single day. However, as Table 25 shows, the disposal time for Local Courts is quite high (90 days in 2019 and 143 days in 2020) and there is a significant backlog.

According to informants, one reason for the backlog is that many Local Courts are not operational. During the rainy season (November-April), the roofs and windows of many of the courts are so badly damaged that holding proceedings is not practical. Also, the service of process is usually delayed because court messengers do not have transportation, and often rely on traditional authorities. One respondent informed that Local Courts use public business centers to create and print court records due to the lack of computing facilities. There is also a significant shortage of Local Court Magistrates. While the statutory establishment is 1143, there are currently only 649 LCMs in employ, leaving a shortfall of 497 magistrates.

Table 25: Productivity Rate, Clearance Rate and Disposition Time (Local Court)

Year	Case Type	Brought Forward	Filed	Disposed	Pending	PR (%)	CCR (%)	DT (days)
2019	Civil	30057	126870	125370	31557	79.9	98.8	92
	Criminal	3695	13806	14583	2918	83.3	105.6	73
	Total	33752	140676	139953	34475	80.2	99.5	90
2020	Civil	31557	134260	120268	45549	72.5	89.6	138
	Criminal	2918	10949	8780	5087	63.3	80.2	216
	Total	34475	145209	129048	50636	71.8	88.9	143

Source: Constructed from Judiciary administrative data

6.5. Accountability

In principle, as per the Constitution, all judicial officers are accountable to the people of Zambia. How this is operationalized in practice is more nebulous.

Internal Structures

Internally, accountability of the Judiciary in Zambia is operationalized through periodic reporting on-court activities via Annual Reports, which are made public. The Annual Reports are a critical accountability tool, since they report on public expenditure, court operations, and court productivity. However, as outlined in the methodology section of this report, data discrepancies, duplications, and omissions characterize some aspects of the Annual Reports. Further, the Judiciary did not prepare or release an Annual Report for the year 2016. These reporting inconsistencies and deficiencies undermine the usefulness of the Annual Reports as an accountability tool.

The judiciary is also annually audited by the Auditor General, and audited statements are tabled in the National Assembly of Zambia, along with the Annual Reports.

Informants were largely unanimous that accountability for individual judicial performance requires greater emphasis. While affirming that judicial independence “must be respected at all costs”, the Chief Justice recently stated that “there is no room for misbehavior under the guise of exercising judicial independence”. He also noted the view that “impunity and unaccountability may have taken root among our adjudicators owing to what some people view as distant supervision” (Chief Justice Malila, 2021).

Respondents highlighted a significant gap in the oversight and supervision of individual adjudicators. Respondents informed that supervising judicial officers are also full-time adjudicators, and compounding their heavy, dual-function workload, is the fact that supervising officers have limited administrative support in the exercise of their supervisory functions. For example, the Chief Justice holds overall responsibility for the supervision of all judicial officers. However, while the Chief Justice is furnished with monthly returns for each judge of the superior courts,²⁰ informants report that due to the numerous administrative and adjudicative responsibilities that fall on the office of the Chief Justice, it does not have adequate time or administrative support to study the returns and form a considered view on performance and potential remedial actions. Similarly, at the High Court level, internal accountability is operationalized through the offices of “Judges-in-Charge” who manage judges of each division of the High Court and report to the Chief Justice. KIIs revealed that because Judges-in-Charge are full-time adjudicators, they lack the time, training, and administrative support to fully play their accountability function.

²⁰ These returns contain important information on the productivity and case disposal rates of individual judicial officers.

At the lower court level, resource limitations and staffing shortages also impact supervisory functions. At the Subordinate Court level, Chief Resident Magistrates, who are full-time adjudicators and also play an important role in supervising individual magistrates at the district level, do not have the systems, or administrative support in place, to adequately fulfill this supervisory role.

At the Local Court level, each province and district must have a designated “Local Court Officer”, to supervise the Local Courts. However, in practice, not every district has one. Also, informants revealed that a lack of transportation means that Local Court Officers are virtually unable to conduct supervisory visits to Local Courts under their care.

An important aspect of judicial accountability is the public availability of court decisions. As noted elsewhere, “free access to judicial decisions ensures transparency that promotes justice because it helps every person to know the facts of a case, the judge, and the basis for the decision, from which the judge’s impartiality can be ascertained” (Mitee, 2017). Indeed, public access to legal information is an important component of the rule of law, and one of the “necessary conditions for a working democracy” (Graham et al, 2012).

The importance of free access to judicial decisions notwithstanding, the Zambian Judiciary does not consistently release its judicial decisions into the public domain. While the Judiciary, in principle, regards judicial decisions as public documents, this is not operationalized in practice.²¹ The Council of Law Reporting does publish the Zambia Law Reports (ZLR); however, very few judgments are reported, and the Law Reports are not up to date and are many years behind. Further, the ZLR, currently only offered in print form, are very costly and well beyond the reach of ordinary Zambians. Confining judgment publication to Law Reports is an outmoded practice. The contemporary and established practice in regional and international Commonwealth jurisdictions is to release judgments for free and unrestricted distribution soon after judgments are delivered. These judgments, when released, are often accompanied by simplified case summaries for the public’s information.

At the time of reporting, rulings and judgments can only be accessed from individual court registries at a prohibitive “per page” charge. Even if one is willing and able to pay for access, many judgments are missing, and registry staff is often unable to locate requested judgments. Accountability requires access to judicial decisions to be free, unrestricted, and practical. The lack of free and easy access to judicial decisions promotes disinformation about the Judiciary and their core business, undermining transparency and accountability.

External Accountability

Under the 2016 Constitution, the JCC is responsible for investigating complaints and enforcing the Judicial Code of Conduct. The Constitution gives the JCC a key role in the removal of judges on specified grounds (incapacitating mental or physical disability, incompetence, gross misconduct, or bankruptcy). However, as explained by the Chair of the JCC, there is a lacuna in the law concerning the powers of the JCC over judicial officers that are lower than a judge.

In the case of lower-level judicial officers, including Subordinate and Local Court Magistrates, the process for removal is not governed by the Constitution but by the Judicial (Code of Conduct) Act. Under this Act, the JCC cannot initiate removal of a magistrate, but can only recommend removal to the JSC. This results in a supervisory overlap between the JCC and the JSC, and a lack of clear enforcement powers.

²¹ The Judiciary, for a very brief period, did post some of its decisions online, but respondents report that due to the lack of server space, that practice has now been abandoned.

Another factor undermining the work of the JCC is its lack of presence at the district level. While there is some capacity to make complaints to the JCC through the offices of District Commissioners, this avenue is not often used as there is low awareness of this option.

Until recently, there was very little public information about the investigative and disciplinary work of the JCC, creating the impression that judicial officers are never sanctioned and are untouchable. However, during the interview with the Chair of the JCC, it became apparent that several magistrates have been removed due to misconduct. Further, in May 2022, on the recommendation of the JCC, the President fired one High Court judge and suspended another, both for corruption. This marked the first time in decades that a superior court judge had been removed on disciplinary grounds and is a watershed moment for the work of the JCC. Still, there is no established mechanism through which the JCC shares its work with the public, and neither are there publicly available statistics on the number and nature of disciplinary cases handled by the JCC within a given period.

6.6. Independence

Judicial independence is constitutionally prescribed, but it is difficult to assess the extent to which it is safeguarded in practice. As noted earlier, judicial independence in Zambia has been questioned in several international indices. For example, Freedom House scored Zambia 2 out of 4 for judicial independence due to perceived executive interference in the appointment of judges and in the conduct of court business (Freedom House, 2021). In the previously cited Afrobarometer survey (2021), 78% of sampled respondents believe that some elements of the Zambian judiciary are corrupt.

To be sure, judicial independence in Zambia has been compromised by perceptions of corruption and political influence over some adjudicators. These perceptions have been solidified by the recent firing and suspension of two High Court judges for corruption. Informants generally agreed that the corruption allegations that have been leveled against a small number of adjudicators have dented the image of the entire institution. So too, the JCC informed that allegations of corruption were the second most frequent complaint (the first was delay). The JCC also explained, however, that it lacks proper investigative capacity to independently examine these allegations. Instead, it must rely on institutions such as the Anti-Corruption Commission and the Financial Intelligence Centre to investigate particular allegations and provide information back to the JCC for further action.

A look at the appointment mechanism for judges in Zambia demonstrates that the process leaves room for the selection of executive-beholden judges. Article 140 of the Constitution governs the appointment of judges: the President appoints judges “on the recommendation of the Judicial Service Commission.” Article 219 and 220 of the Constitution deal with the JSC; Article 220(2)(b) indicates that it is the duty of the JSC to “make recommendations to the president on the appointment of judges.” The use of the word ‘recommend’, grants unfettered discretion to the President. The word ‘recommendation’ was narrowly defined by the Supreme Court in the case of *Minister of Information and Broadcasting v. Chembo and others SCZ Judgment No. 11 of 2007*. According to the court, to recommend “implies discretion in the person to whom it is made to accept or reject the recommendation.” Thus understood, the President has a free hand to constitute the judicial bench, and is unrestrained by any requirement of integrity, impartiality, commitment to constitutional values, and competence. This can be contrasted with the South African Constitution where, in appointing judges of the Constitutional Court (except the Chief Justice and his/her deputy), the President is limited to candidates shortlisted listed by the JSC.²²

22 Section 174(4) Constitution of South Africa 1996.

Further, the appointment process lacks transparency: judicial vacancies are not advertised, and the recruitment and appointment processes are shrouded in secrecy. As a result, it is impossible to know what qualified one candidate over another.

The Constitution also leaves the composition and structure of the JSC to be prescribed in subordinate legislation. This is problematic as it allows for the “packing” of the JSC. Section 5 of the Service Commissions Act Number 10 of 2016 provides for the composition of the JSC in its current form. The members include the chairperson, who is appointed by the President, a judge nominated by the Chief Justice, the Attorney General, the Permanent Secretary responsible for public service management, a magistrate nominated by the Chief Justice, a representative of the Law Association nominated by the Association, the Dean of a Public law school nominated by the Minister for Justice, and another person appointed by the President. As can be seen, the JSC is mainly made up of persons who, either directly or indirectly, owe their office to the President and, therefore, does not give the impression of a truly independent commission.

Although appointment mechanisms are the principal tools used by regimes to “pack” courts, the composition and character of a court can also be affected by removal mechanisms. Sujit Choudhry (2009) argues that the power of removal is directly related to the power of appointment for at least two reasons: First, the power of removal allows the appointing regime to remove individuals who may have been appointed on a non-partisan basis or who may have behaved independently in order to pave the way for a partisan appointment. Second, the power to remove judges may serve as a tool to enforce the ‘the principal-agent relationship’ between the appointing regime and the appointed judge.

In the case of Zambia, the power to remove judges is shared between the President and the JCC. Previously, the President could on his or her own motion, initiate the process of removal of a judge. This was changed by the 2016 constitutional amendment. Currently, Articles 143 and 144 govern the removal of judges from office. A judge is removable for a mental or physical disability that impedes the performance of their work, gross misconduct, incompetence, and bankruptcy (Article 143). The removal process can be embarked upon by the JCC acting on its initiative or when seized by a complaint. Where the JCC investigates and finds against the concerned judge, the JCC recommends the removal of the judge to the President, who shall remove such judge immediately.²³ On its face, it appears that the President plays only a peripheral role. However, it must be noted here that the President has a free hand in constituting the JCC. Its members are not appointed by the JSC but are directly appointed by the President.²⁴ As Hatchard et al (2009) argued, leaving such power in the hands of the President “provides a potential weapon through which to intimidate judges and thus help create or maintain a pliant judiciary.” Simply wielding that power, even when not invoked, sends a clear message to judges that the President holds the levers of power over them.

6.7. Effectiveness

While there is no court in Zambia operating at maximum effectiveness, pockets of the Judiciary such as the SCC and the GBV courts, have shown potential to innovate to improve accessibility and efficiency. The SCC has decongested higher courts and bridged the justice gap for persons unable to access the formal court system. The barring of lawyers and the dispensing with formal court procedures, drive down what have become the two prerequisites of modern-day litigation: time and money.

²³ Ibid, Article 144(5)(b).

²⁴ Section 20(2) Judicial (Code of conduct) (Amendment) Act No. 13 of 2006.

The GBV courts are effective when they operate as standalone courts with specialized judicial staff who are able to deal sensitively and speedily with GBV matters. These standalone courthouses provide designated spaces for victims and witnesses, and the appropriate facilities required to limit interactions between accused persons and complainants. Unfortunately, standalone GBV courts only operate in five locations throughout Zambia and thus the overall effectiveness of the GBV courts is marginal. It is also important to note that GBV cases in Zambia remain high, and only a fraction of reported cases pass through the court system. The Zambia Gender Status Report 2017-2019 revealed an overall low number of criminal convictions for GBV, attributed to a “lack of evidence for securing convictions” as well as to withdrawals of cases by GBV victims (Ministry of Gender, 2021).²⁵ It also showed disparities between the numbers of reported GBV cases taken to court and those not taken to court. For example, in 2019, 3,109 reported cases were taken to court while 22,012 were not. It stated that increases in the number of cases not taken to court between 2017 and 2019 “could be attributed to cases that were either withdrawn at the police station or had incomplete files in terms of missing supporting documents or to cases not being pursued by the complainants due to social and cultural norms” (Ministry of Gender, 2021).

The Taskforce on Backlog in the High Court demonstrated an effective approach to the problem of delay. Of the 4,676 cases taken on, 4,212 were disposed of by September 2020 (90%) leaving just 464 cases pending. It may be that similar backlog taskforces are required in the lower courts to dismantle the problems faced there.

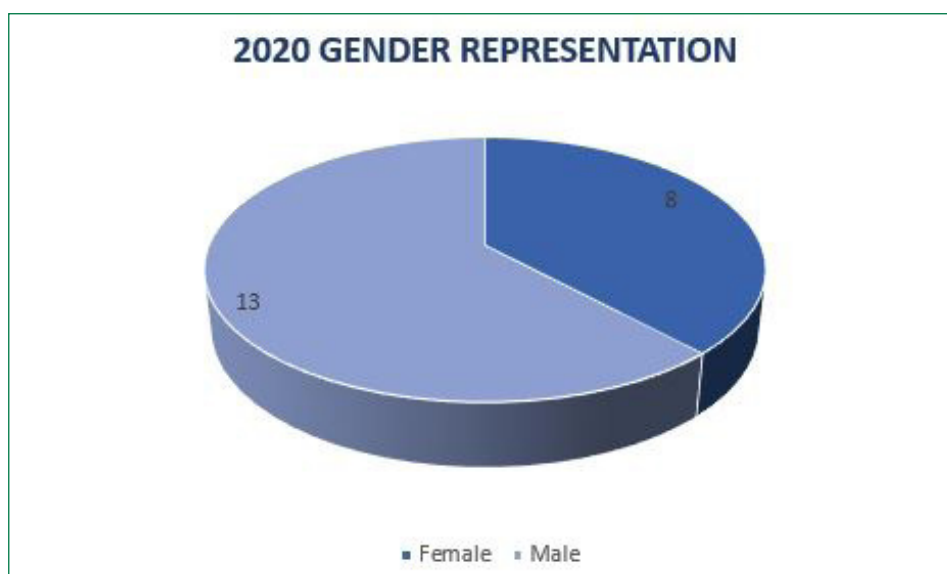
The Commercial Court Division of the High Court is also a successful innovation. Informants were unanimous in their positive assessment of its effectiveness and efficiency. The reasons for the strong performance of the Court include that the Commercial Court rules set firm standards on the quality of pleadings, Commercial Court judges take a proactive role to manage proceedings and reduce delay, unjustified delays are explicitly prohibited and penalized with strict time limits imposed, and Commercial Court judges have developed deep expertise, as similar types are recurrent.

When examining effectiveness, it is also important to acknowledge the key role of Local Courts. Due to their geographical reach, their embeddedness, and their informal and flexible procedures, if resourced effectively, there is ample potential for Local Courts to disperse timely and relevant justice across the country. Having been largely neglected, informants noted that Local Courts contribute the most to the courts in terms of revenue generation, yet they continue to benefit the least from long-term investments in court operations.

The Judiciary has also been effective in achieving greater gender parity in judicial staff at all levels of the court, as noted in the figures provided throughout this report. The growing gender balance is further demonstrated by the gender distribution of administrative staff, particularly registrars and senior administrators. For example, in 2019 and 2020, there were eight female and 13 male senior administrative staff (Figure 11 and Table 26) (Judiciary of Zambia, n.d.). The successful implementation of GBV fast-track courts is another clear way in which the Zambian judiciary is ensuring greater access to justice for women in the country. However, there remain key challenges that require further consideration and research, including the high number of GBV cases in Zambia, as well as the need to examine traditional justice mechanisms through the lens of gender considerations.

²⁵ Respondents informed that withdrawal is more likely when there is delay in the court process because there is greater opportunity for reconciliation with the perpetrator and/or external pressures relating to minor children, safety, and financial pressures (including the cost of attending court).

Figure 11: 2020 Gender Representation – Administrative Staff (Registrars and Senior Administrators)



Source: Judiciary of Zambia website – gender representation

Table 26: Administrative staff – Registrars and Senior Administrators

		Registrars	Senior Administrators
2020	Female	4	4
	Male	7	6
2019	Female	4	4
	Male	7	6
2018	Female	5	4
	Male	6	6
2017	Female	5	4
	Male	6	6

Source: Judiciary of Zambia website – gender representation

6.8. Conclusion

This component considered service delivery in the Judiciary through the lens of five dimensions – accessibility, efficiency, accountability, independence, and effectiveness. In addition to each of these five dimensions playing a critical role in determining the quality of judicial service delivery, it is also important to recognize that service delivery is often a function of a combination of these dimensions. The key issues affecting the accessibility of the courts are the limited court infrastructure and inadequate legal aid provision. Efficiency is hampered by inadequate courtroom space, significant adjudicative shortages and high workloads, a lack of case management/IT systems, unmet training needs, and a lack of transport and administrative support to conduct court business. An improvement of both internal and external structures is required to address the accountability of the Judiciary. Poor accountability mechanisms are connected to weak judicial independence found in legislative frameworks and widespread perceptions of corruption among judicial officers. While a few court innovations have resulted in greater effectiveness of a cross-section of courts, across all courts, service delivery is hampered by key challenges: infrastructure, manpower shortages and unrealistic workloads, technological constraints, and lack of training.

7. POLICY, CAPACITY, AND INSTITUTIONAL BINDING CONSTRAINTS TO SERVICE DELIVERY IN THE JUDICIAL SECTOR

This chapter explores component five, which assesses HR and infrastructure-related policies and strategies, to highlight policy and implementation constraints, as well as challenges that impede service delivery in the Judiciary sector.

7.1. Infrastructure in the Judiciary

Overall Institutional, Legislative, and Policy Frameworks for Infrastructure

The Ministry of Infrastructure, Housing and Urban Development (MIHUD) has the mandate for the designing, procuring, and construction of all public infrastructure.²⁶ Given that Zambia does not have an integrated approach to infrastructure development, there are various actors involved in this space. These include the Ministry of Energy (for energy), the Ministry of Transport and Communications (MTC) (for ICTs, meteorology, and transport policy), the Ministry of Local Government and Rural Development (MLGRD)²⁷ (for maintenance of transport, water and sanitation, recreational facilities), and all other line ministries (for sector-specific policies). While it is important to note that some of these ministries were realigned in September 2021 following the General Elections, this assessment covers 2015-2016, therefore the pre-2021 institutional arrangements are still relevant.

Additionally, the institutional arrangements reveal widespread duplicity of mandates across line ministries and institutions, contributing to the weakening and inadequacy of the institutional framework for the infrastructure industry in Zambia. The frequent ministerial realignments and resultant changes in mandates also present coordination hurdles, thereby contributing to inefficiencies in infrastructure development. Also notable is that the current institutional framework has no specific focus on judiciary infrastructure, indicative of the low prioritization of the sector's infrastructure development. Most of the Judiciary-related infrastructure falls under MIHUD (housing, office), and MTC (ICT).²⁸

While there is an elaborate legal framework to guide infrastructure development in Zambia, some of the existing laws are inadequate and obsolete. Additionally, the framework does not adequately provide for the maintenance of infrastructure. Further, no legislation provides for coordination in the development of infrastructure.

Zambia considers infrastructure development as an essential ingredient in its economic development agenda, as demonstrated by its inclusion in the National Development Plans and long-term aspirations (GRZ, Vision 2030, 2006). However, the country does not have a National Infrastructure Policy to ensure coordination of infrastructure development. It is important to note that the MIHUD is in the process of developing a National Infrastructure Policy for Zambia that speaks to some of the issues raised.

26 Following the August 2021 General Elections, the Ministry of Housing and Infrastructure Development (MHID) was restructured and renamed Ministry of Infrastructure, Housing and Urban Development (MIHUD).

27 The Ministry of Local Government and Housing (MLG) was reorganized as the MLGRD in September 2021.

28 The Ministry of Works and Supply was also involved in maintaining public buildings and office space. The Ministry was scrapped in September 2021.

As noted, the multiplicity of institutions and agencies in the sector presents a challenge for integrated infrastructure policy formulation and implementation. Each of the main actors in the space has its own infrastructure policy or some form of plans or strategies to guide its development, contributing to fragmentation in infrastructure development.

Institutional and Policy Arrangements for Judiciary Infrastructure

Table 27 summarizes the line ministries involved in the development of judiciary infrastructure, while Box 3 provides the process for the development of judiciary infrastructure.

Table 27: Main Actors in Judiciary Infrastructure Development

Institution/Ministry	Role
MoFNP	Financing the projects
MIHUD	Collaboration with the Judiciary in planning, designing, implementation, and supervision of infrastructure projects
Ministry of Home Affairs and Internal Security	Provision of requirements and design brief for holding cells and security
MoJ	Policy and planning collaboration
MLGRD	Acquisition of land plots for the construction of courthouses.
Ministry of Lands and Natural Resources	acquisition of title deeds

Source: Authors' construction based on consultations with Judiciary Officials in the Infrastructure Unit

The Judiciary Infrastructure Unit collaborates with the Advisory Committee on Infrastructure and the Judiciary Maintenance Section under Administration Division to develop judiciary infrastructure. The Judiciary Infrastructure Unit comprises the Chief Planner, Principal Planners Civil, and Quantity Surveyor).

Specifically, the Judiciary Infrastructure Unit is tasked with the following:

- i. It is the liaison unit between the Judiciary through the office of the Chief Administrator and MHIUD in technical expertise (input).
- ii. Lead and technically contribute to the development of the judiciary infrastructure budget (in collaboration with the office of the Chief Administrator and the Chief Accountant) for onward submission to the MoFNP to facilitate mobilization of financial resources.
- iii. Provide guidance, technical expertise, and support to the office of the Chief Administrator and the Advisory Committee on Infrastructure, to identify infrastructure challenges and needs, as a critical part of the elaboration of an infrastructure development plan.
- iv. Coordinate with MIHUD to undertake regular site inspections and supervision of all construction, maintenance, and rehabilitation projects, to ensure adherence to set standards and court operations requirements. Certification of works executed is the mandate of the MIHUD.

- v. Advise management on technical expertise regarding project implementation, site meetings, inspections, visits, possessions, and handover; project monitoring; payments; and workmanship of the executed works.
- vi. Manage and coordinate the preparation of tender documents such as the drawings and bills of quantities submitted by the MIHUD to the Judiciary for the tender process.

As noted, the Judiciary does not have a standalone infrastructure policy, but rides on existing plans and strategies in the MoJ and the MIHUD and must collaborate with the multiple actors in the infrastructure industry. The multiplicity of players, coupled with fragmented institutions and a weak legislative framework for infrastructure compound the development of infrastructure in Zambia. Consultations with judiciary officials pointed to the existence of plans, concept notes, an Advisory Committee on Infrastructure, and documents on infrastructure, with no comprehensive sector-specific infrastructure policies. Judiciary officials pointed out that the main impediment to judiciary infrastructure development is inadequate funding and a lack of prioritization by MoFNP.

Further, the finding that the Judiciary collaborates with the MoJ and MIHUD while depending on treasury funding (or MoFNP) has implications for efficiency in judiciary infrastructure development as well as its independence. Inadequate infrastructure is, therefore, a major impediment to equitable access to justice.

Box 3: Process for Planning and Developing Judiciary Infrastructure

- a) Identification, assessment and addressing of priority issues regarding infrastructure challenges and specific needs
- b) Development of a brief requirement in relation to the challenges and needs
- c) Preparation of a comprehensive Infrastructure Development Plan
- d) Development of concept notes, plans, designs and specifications for the proposed projects
- e) Collaboration with the MHIUD and Ministry of Works and Supply (in Dissolution) to ensure:
 - that the infrastructure needs of the Judiciary are adequately considered in the formulation of government infrastructure planning and policy
 - That there is a national approach to common user infrastructure prioritization
 - the preparation of detailed designs and specifications of the projects and implementation
 - that inspections, supervision and certification of the executed works are performed
- f) Submission of the approved projects by the Advisory Committee on Infrastructure to the Public Investment Planning Department under the MoFNP for consideration and validation.
- g) Monitoring and supervision of the execution of all capital projects to ensure that standards, quality and value for money is realized.

Source: Judiciary Infrastructure Unit

State of Judiciary Infrastructure

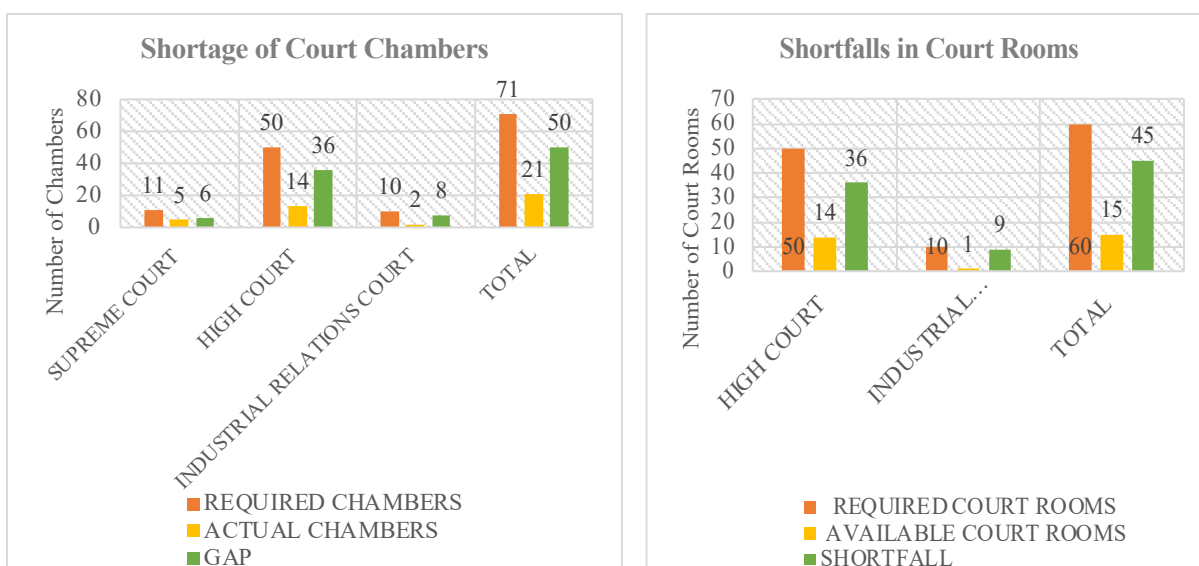
Infrastructure is vitally important for the effective and efficient delivery of justice. However, as detailed in component four, the judiciary infrastructure in Zambia is inadequate and in a dilapidated state. A key informant noted that despite rapid population growth, there has not been much change in the way the Judiciary is managed. He added that the court infrastructure has not changed much in thirty years, and the infrastructure deficits are wider at the Local Court level, with rural courts lagging far behind. The infrastructure challenges include inadequate courtrooms (Figure 12), staff houses, and office space, and insufficient funding, among others (Table 28).

Table 28: Judiciary Infrastructure Challenges

Constitutional Court	High Court	Subordinate Courts	Local Courts
Lack of Registry, Judges', and office space for support staff	Inadequate Judges' chambers, and office space for support staff	Insufficient courtrooms and office space in all Subordinate Courts	Insufficient courtrooms and office space in all Subordinate Courts

Source: Judiciary Annual Report 2019-2020

Figure 12: Court Room Shortages in the Judiciary



Source: Judiciary interviews and documents

The infrastructure deficits are more striking at higher court levels and in rural areas. For instance, the High Court only has buildings in five out of ten provinces: Lusaka (Lusaka); Southern (Livingstone), Copperbelt (Kitwe & Ndola); Central (Kabwe); and Eastern (Chipata). Until recently, the rest of the provinces relied on monthly court circuits for higher court services.²⁹ These infrastructure deficits contribute to judiciary inefficiencies that manifest in huge case backlogs, and prison congestion (GRZ, 2013).

29 On 7th February 2022, the Chief Justice launched the Provincial Judgeship Program, resulting in deployment of Judges to all Provincial HQs.

The key driver of infrastructure shortages is the inadequate judiciary financing that was highlighted in component three. Further, there has been limited donor support for infrastructure development in the Judiciary. Stakeholders interviewed noted that few donors, such as USAID, UNDP, and UNICEF, have been active in the field of judiciary sector infrastructure.

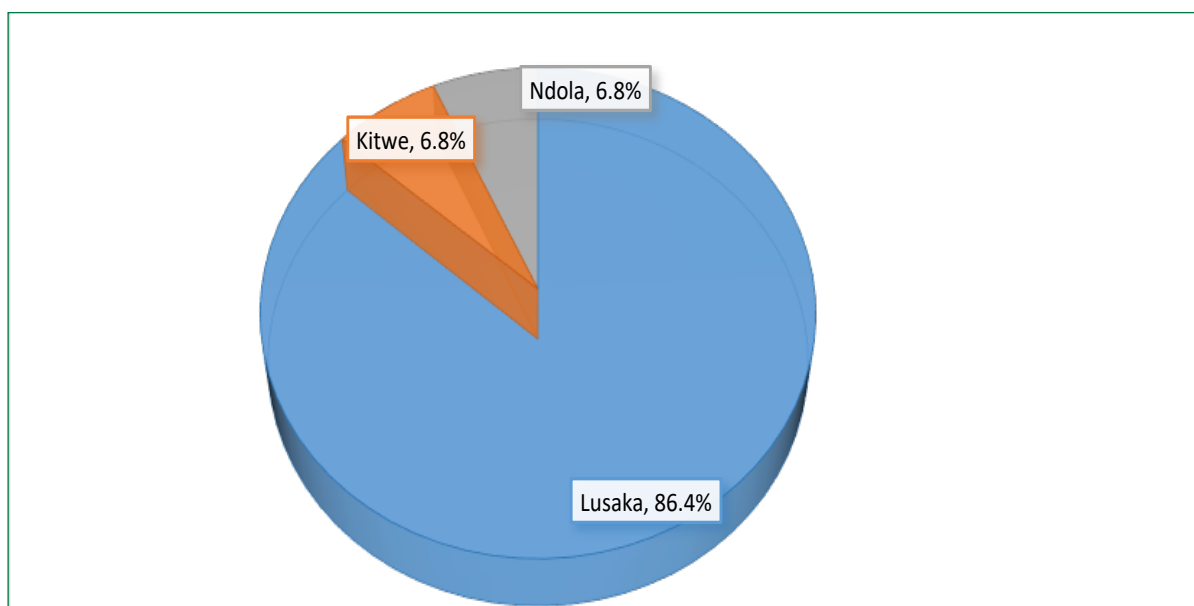
As the 2013 Committee on Legal Affairs, Governance, Human Rights, Gender Matters and Child Affairs (P.8) observed, “the judiciary had continued to operate in pre-independence court buildings which were too small and not conducive for the dispensation of justice in the modern era”.³⁰

There is no overarching digital or ICT strategy that sets out a vision or strategic plan for the integration of digital technology within the institution for the conduct of court business. The 2020 JAR sums up the state of ICT infrastructure in the Judiciary as follows:

Following the end of the Zambia Justice Information Systems (ZAJIS) Project in 2014, which saw the computerization of several areas of court operations (namely, court reporting, record management and automation of courtrooms), there has been no meaningful investment in information communication technology (ICT). This has rendered existing equipment obsolete(...) Inadequate funding affected the judiciary to the extent that capital projects, including those that were 80 percent complete at the end of 2019, could not be completed.

Cognizant of the crucial role digitization plays in the delivery of justice, the Judiciary embarked on the Computerization project in 2019. The project, which was supported by the Investment Climate Facility (ICF), sought to address the digitization shortcomings in the sector. The project covered Lusaka, Ndola, and Kitwe. By the end of 2019, 113,831 case records had been digitized, translating into 1.9 million individual court records. Results indicate that a total of 98,362 records had been digitized in Lusaka, representing 86.4% of the scan. This compared to 7,760 (6.8%) and 7,709 (6.8%) scanned records in Kitwe and Ndola, respectively (Figure 13).

Figure 13: Progress in Digitization

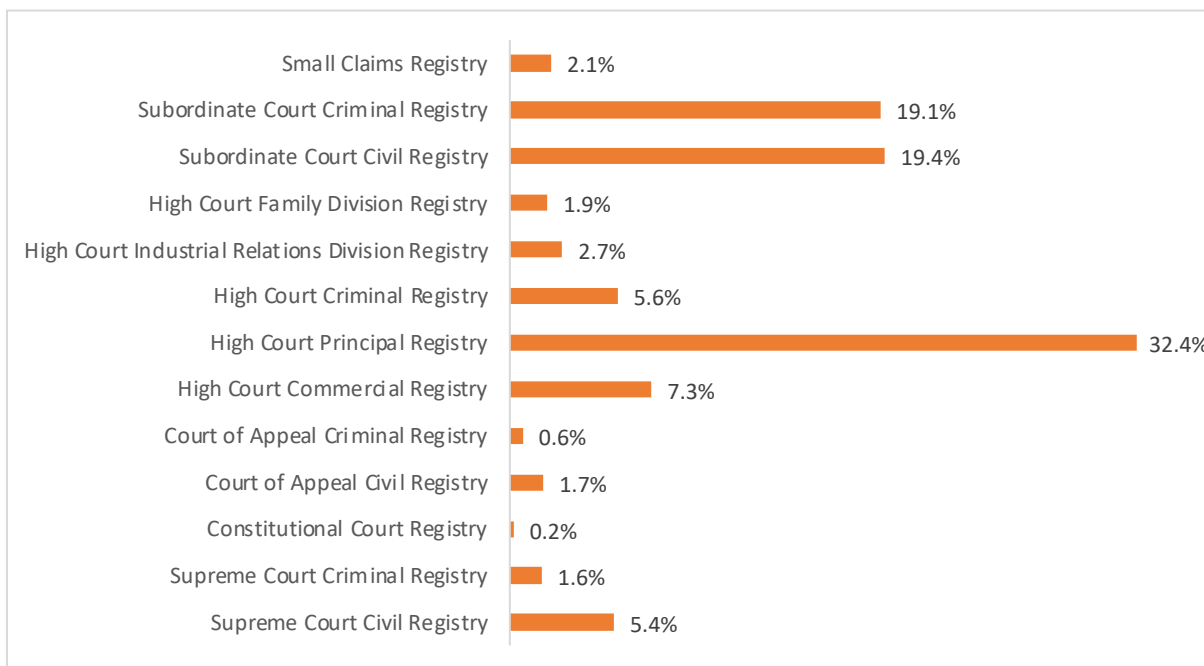


Source: Judiciary documents and consultations

The analysis by court level and registry reveals a varied digitization progress, and a skewed distribution of ICT investments towards higher courts (Figure 14). The High Court Principal Registry is the most digitized, accounting for 32.4% of the total scanned records. The Subordinate Court Civil and Subordinate Court Criminal follow in second and third places, accounting for 19.1% and 19.4% of total digitization in Lusaka, respectively. The Constitutional Court and Court of Appeal were the least benefitted from the project.

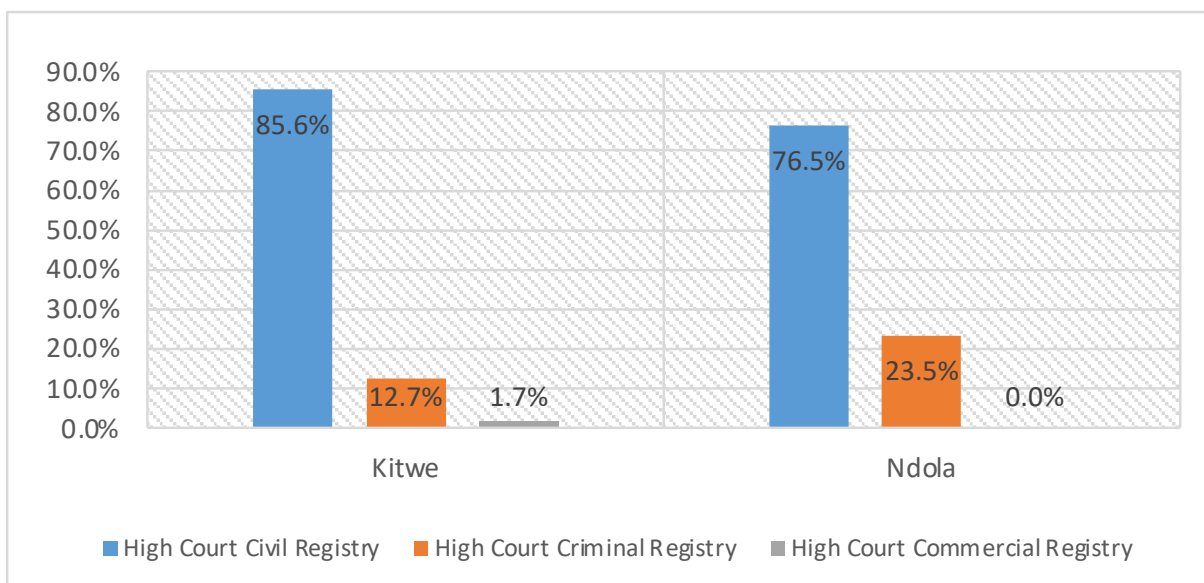
Results show that the High Court Civil registries are the most digitized accounting for 85.6% and 76.5% of the total scanned records in Kitwe and Ndola, respectively. The High Court Criminal registries follow in second place at 12.7% for Kitwe and 23.5% for Ndola (Figure 15).

Figure 14: Lusaka, Scanned records (% of all records) as of December 31, 2019



Source: Judiciary consultations and documents

Figure 15: Scanned Records, Copperbelt Province



Source: Judiciary consultations and documents

The project also included the computerization of courtrooms across the three cities (with two High Courts in Kitwe). While some progress has been made in computerizing the courts, the project did not provide support for lower courts, and for courts in rural provinces.

7.2. Human Resources in the Judiciary

This section highlights the HR policies, practices, and structure in the judiciary sector. The section also includes an analysis of the Judiciary HR situation in Zambia.

Policies and Processes

Key HR institutions include the Management Development Division (for optimal management of HR); Public Service Management Division (PSMD) (overseeing HR in the public sector); Public Service Unions, and the judicial and Allied Workers Union of Zambia; the JSC (for judiciary HR); and the JCC (to enforce discipline).

As discussed in component four, although presidential appointments are subject to parliamentary ratifications and are made in consultation with the JSC, prior literature indicates that these oversight processes are compromised due to the partial blending of the Executive and Legislature, and the fact that the President is heavily involved in the appointment of members of the JSC. Further, the JSC does not include representation from the opposition, thereby limiting the oversight role of the opposition and civil society.

Research indicates that the appointment of judges and administrative staff has an immense bearing on the independence of the Judiciary (Gloppen, 2004). As the Chairperson of the Southern African Chief Justices Forum put it during his remarks at the 2018 conference: “the freedom of judges has a close relationship with judicial appointments because the mechanism for appointment of judges is directly related to the impartiality, integrity, and independence of judges” (The Judiciary of Zambia, 2018). However, a closer look at the Constitutional (Article 140) provisions for judiciary appointments and JSC duties, suggests that the Executive has a heavy hand in judiciary HR decisions, undermining the sector’s independence and bringing the legitimacy of the judiciary staff into question.³¹

Stakeholder consultations and information from various government websites indicate that various policies and procedures guide human resource management in the public sector and the Judiciary. These include Terms and Conditions of Service for the Public Service; Service Commission policies and procedures for employment in the Public Service; Service Commission Regulations; Disciplinary Code and Procedures for Handling Offences in the Public Service; Cabinet & PSMD Circulars; Performance-Based Contracts.

The Human Resource Situation in the Judiciary

Patterns and Trends in Judiciary Staffing Levels in Zambia

The evolution of the Judiciary’s human resource structure in terms of overall staff level changes over time (over the period 2015-2020) is presented in Table 29. The authorized establishment was 6,607 per year, on average, rising from 6,267 judiciary personnel in 2015 to 6,843 in 2020. On average, over the period, the filled post rate was 74% of the authorized establishment, implying that the vacancy (or shortage) rate was 26%. Stakeholders argued that the HR shortages debilitate the administrative and managerial capabilities of the Chief Justice and Chief Administrator.

³¹ A more detailed treatment of this is given in component four.

Article 120 (4) of the Constitution provides for the devolution of justice functions, including HR, to the provinces and districts, save for the Supreme Court and the Constitutional Court. The slow pace of devolving HR functions to the provinces has also contributed to the HR shortages, especially at the High Court level. However, the Judiciary has made steps to correct this imbalance with the rollout of the Provincial Judgeship Program which the Chief Justice launched on February 7, 2022. As a result, judges have been deployed to Solwezi High Court; Mongu High Court; Chipata High Court; Kasama High Court, and Mansa High Court.

Implicit in Table 29 is the fact that the authorized establishment (the number of posts) increased by 1.8% per year on average, while filled posts increased by 3.6% per year and vacancies decreased by 2.5% per year. The notable increase (of 7.9%) in the authorized establishment in 2017 (compared to 2016) was due to the introduction of the Constitutional Court and the Court of Appeal.

Table 29: Evolution of human resource profile in the Judiciary

	2015	2016	2017	2018	2019	2020	2015-2020
Authorized establishment (No.)	6,267	6,234	6,728	6,728	6,843	6,843	6,607
Filled posts (No.)	4,422	4,597	5,085	4,904	5,206	5,245	4,910
Filled posts (% of authorized establishment)	71%	74%	76%	73%	76%	77%	74%
Vacancies (No.)	1,845	1,637	1,643	1,824	1,637	1,598	1,697
Vacancies (% of authorized establishment)	29%	26%	24%	27%	24%	23%	26%

Source: Constructed from JARs and administrative data

On average, the Judiciary had an authorized personnel establishment of 37 individuals per 100,000 persons in the population and 28 per 100,000 in actually filled posts (Table 30). The latter indicates that, on average, each member of the Judiciary serves 3,571 citizens. This suggests that the Judiciary is acutely understaffed, contributing to the deterioration in judiciary service delivery.

Table 30: Judiciary human resources per 100,000 inhabitants

	2015	2016	2017	2018	2019	2020	2015-2020
Authorized establishment (No.)	38	37	39	38	37	36	37
Filled posts (No.)	27	27	29	27	28	28	28

Source: Constructed from JARs and administrative data

The breakdown of human resources into courts and other institutions of the Judiciary is presented in Table 31. In both years, the largest shortage rates, at 53% and 51%, respectively in 2018 and 2020, were at the Local Court level. The lowest vacancy rates in 2018 were at the High Court level while, in 2020, the Subordinate Courts and Administration shared the lowest vacancy rate, 18%.

Against this backdrop, the Judiciary undertook a recruitment needs assessment, which it published internally in March 2021. This established that overall recruitment needs in the Judiciary had increased from 1,598 persons in 2020 to 2,700, as of March 2021, representing a 39% vacancy rate – the largest vacancy rate seen between 2015-2021. However, HR challenges are also exacerbated by infrastructure bottlenecks such as inadequate courtrooms and ICT facilities to ease the processing of cases.

Table 31: Human resource profile in the Judiciary, by Court and other

Panel A: 2018							
	<i>Department</i>	<i>Positions</i>	<i>Establishment</i>	<i>Actual</i>	<i>Shortage</i>	<i>Filled post rate (%)</i>	<i>Shortage rate (%)</i>
1	Supreme Court	Judges	13	13	-	100%	0%
2	Constitutional Court	Judges	13	7	6	54%	46%
3	Court of Appeal	Judges	19	12	7	63%	37%
4	High Court	Judges	60	50	10	83%	17%
5	Subordinate Court	Magistrates	248	193	55	78%	22%
6	Local Court	Local Court Magistrates	1,143	537	606	47%	53%
7	All courts		1,496	812	684	54%	46%
8	Administration & others		5,232	4,092	1,140	78%	22%
9	Total		6,728	4,904	1,824	73%	27%

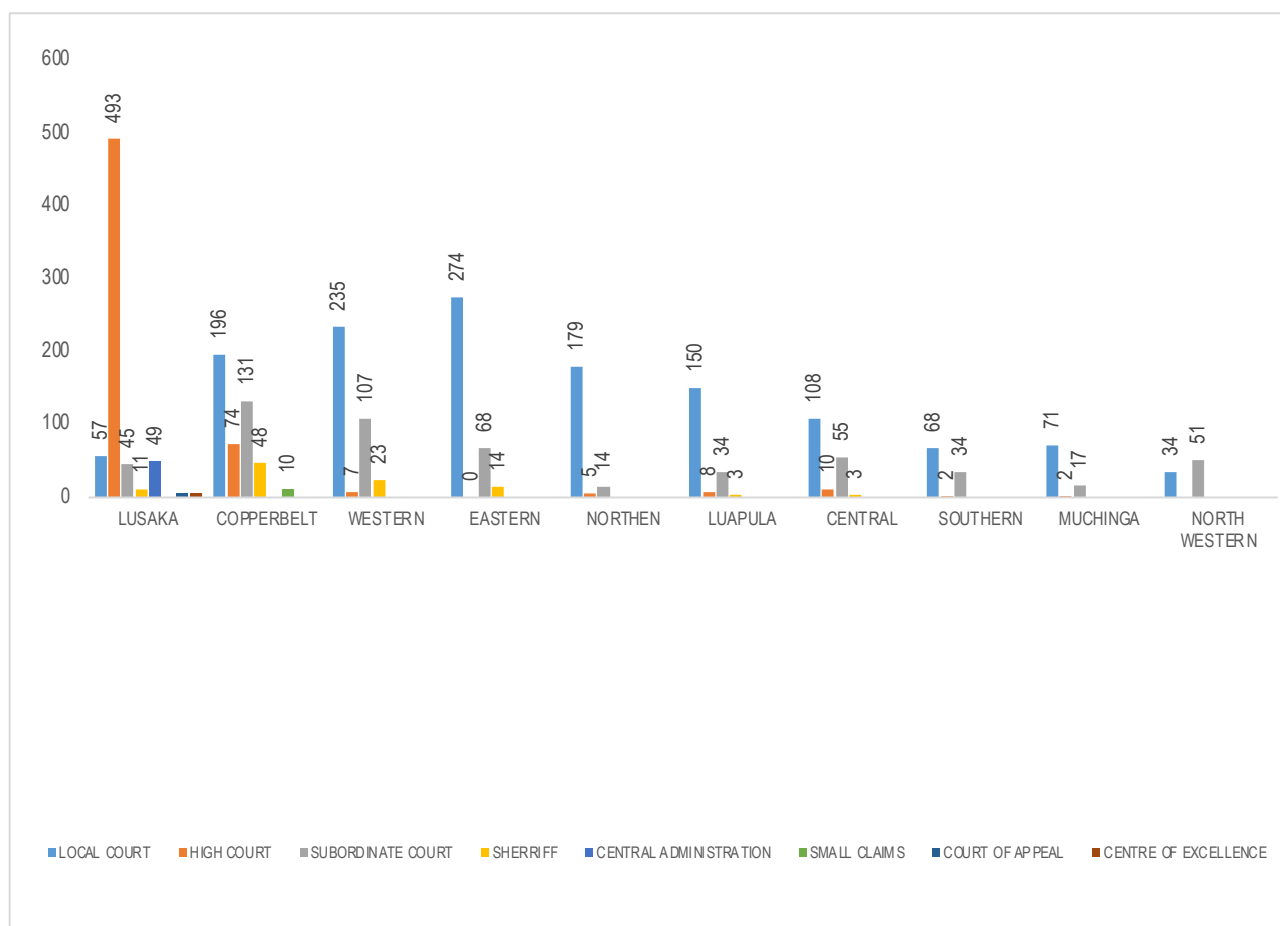
Panel B: 2020							
	<i>Department</i>	<i>Positions</i>	<i>Establishment</i>	<i>Actual</i>	<i>Shortage</i>	<i>Filled post rate (%)</i>	<i>Shortage rate (%)</i>
1	Supreme Court	Judges	13	13	-	100%	0%
2	Constitutional Court	Judges	13	7	6	57%	43%
3	Court of Appeal	Judges	19	12	7	63%	37%
4	High Court	Judges	60	45	15	75%	25%
5	Subordinate Court	Magistrates	252	206	46	82%	18%
6	Local Court	Local Court Magistrates	1,163	574	588	49%	51%
7	All courts		1,520	858	662	56%	44%
8	Administration & others		5,323	4,387	936	82%	18%
9	Total		6,843	5,245	1,598	77%	23%

Source: Constructed from administrative data

The distribution of the 2,700 personnel gaps in the Judiciary by spending agent (i.e., court types, central administration, and Sherriff's Office) indicates that the largest gap (of 1,372 in this case) was at the Local Court level. On the other hand, the smallest deficits (5 each) were jointly at the Court of Appeal and Center of Excellence levels.

This distribution of the 2,700 personnel gap is presented by province: Lusaka and Copperbelt, the most urbanized provinces, were found to have the largest gaps (665 and 459 persons, respectively), while Muchinga and North-Western provinces were determined to have the smallest (90 and 85, respectively). Figure 14 presents a more nuanced distribution of the personnel gap, by both spending agent and province. The distribution shows that whereas across most provinces the need was greatest at the Local Court level, in Lusaka the need was greatest at the High Court level.

Figure 16: Distribution of human resource gaps, by spending agents and province (March 2021)



Source: Constructed from administrative data

The financial requirement for filling the 2,700 posts needed in the Judiciary is based on the personnel emolument norms applied to each expected position. The total cost was estimated at K136.2 million (US\$6.81 million approx.), which was equivalent to 26% of the 2020 National Budget allocation.

Throughout the review period (2015-2020/2021), a common challenge to filling the authorized establishment in the Judiciary was the lack of Treasury. The absence of financial independence entails that the Judiciary must seek Treasury authority to recruit staff at various levels, exacerbating staffing deficits. This was related to wider fiscal constraints associated with the mounting public debt burden at the macroeconomic level (mentioned elsewhere). With this underlying challenge, filling the 2,700 personnel gap at the equivalent 26% of the 2020 Budget allocation would potentially remain a binding constraint.

The per capita costs of filling the posts in the Judiciary were calculated, with the results presented in Table 32. On average across the Judiciary, it would cost K50,434 (US\$2,522 approx.) per year or K4,203 (US\$210 approx.) per month to establish and maintain each of the vacant posts. By province, the per capita cost range would be from K56,816 (US\$2,841 approx.) in Southern province (the highest) to K50,434 (US\$2,522 approx.) in Muchinga (lowest). By spending agent, the costs per capita would range from K123,649 (US\$6,182 approx.) in Central Administration (highest) to K37,048 (US\$1,852 approx.) in the Centre of Excellence (lowest). The higher per capita costs in the Central Administration than in the frontline of the Judiciary, the Courts, might become a source of discontent for judicial Officers.

Table 32: Per capita annual and monthly costs of filling the establishment in the Judiciary

<i>PROVINCE</i>	<i>K per year</i>	<i>K per month</i>
Southern	56,816	4,735
Central	55,417	4,618
Lusaka	53,376	4,448
North-Western	52,807	4,401
Copperbelt	51,191	4,266
Eastern	48,548	4,046
Western	47,831	3,986
Northern	46,734	3,894
Luapula	45,359	3,780
Muchinga	42,836	3,570
Total	50,434	4,203
<i>SPENDING AGENT</i>	<i>K per year</i>	<i>K per month</i>
Central Administration	123,649	10,304
Subordinate Court	58,896	4,908
High Court	52,354	4,363
Local Court	44,462	3,705
Small Claims Court	42,090	3,508
Sherriff	40,293	3,358
Court Of Appeal	37,048	3,087
Centre Of Excellence	37,048	3,087
Total	50,434	4,203

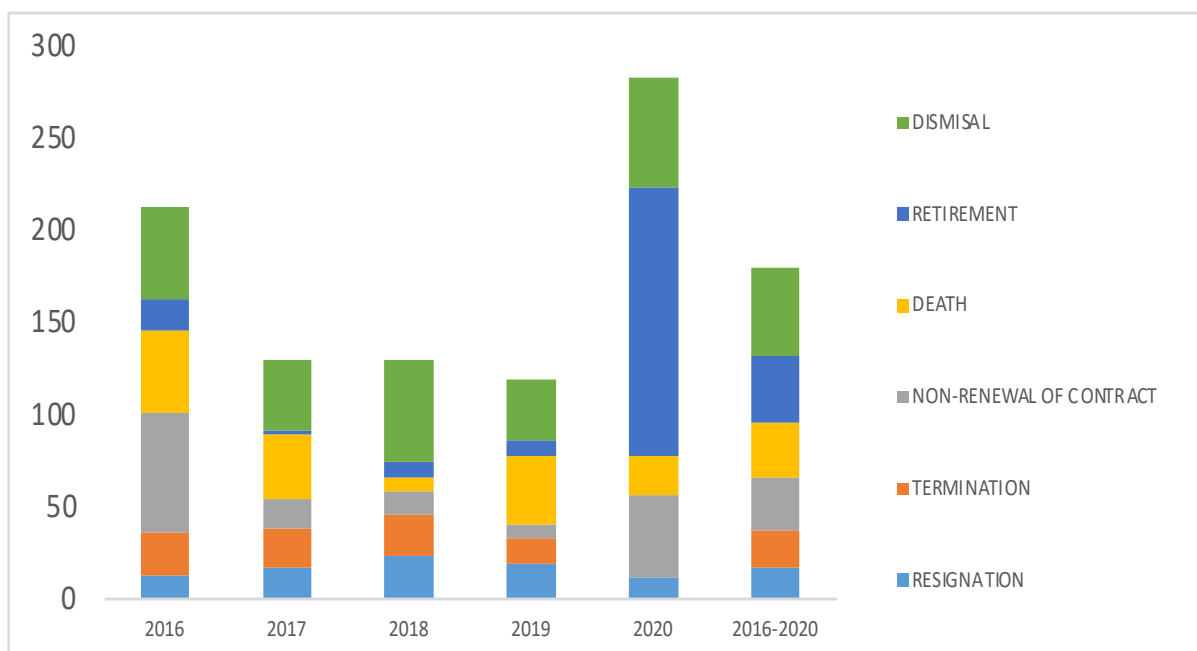
Source: Constructed from Judiciary administrative data

Levels, Patterns, and Trends of Human Resource Attrition in the Judiciary

On average, from 2016 to 2020, 175 judiciary personnel were lost to various forms of attrition each year. The total attrition ranged from a low of 119 persons in 2019 to a peak of 283 persons a year later in 2020. The most prevalent sources of attrition, on average, were dismissals (48 persons per year), followed by retirements (36 per year, although this was due to an unusually high level of retirements in 2020) and deaths (29 per year) (Figure 17). The lack of capacity building and training programs for staff could explain the poor retention record. The Judiciary has since submitted an Act for the establishment of a Judicial College to the Ministry of Justice to counter some of the performance problems in the Judiciary (JAR, 2020).

It will be critical to establish or enhance the human resource code of conduct interventions, succession plans, and health and wellness initiatives in the Judiciary to minimize prevailing attrition levels and boost prospects for filling and stabilizing the authorized establishment.

Figure 17: Sources of human resource attrition



Source: Constructed from administrative data

7.3. Conclusion

This review has provided a detailed overview of the human resource and infrastructure-related policies and strategies in the Judiciary, as well as the profiles of human resource and infrastructure endowments in the sector. It has highlighted the key policy and implementation gaps, constraints, and challenges which impede service delivery in the judiciary sector, noting, in particular, a human resource gap of about 26% of the authorized establishment. Other impediments to effective and efficient justice delivery include the inadequate and dilapidated judiciary infrastructure. While ICT promises to be a game-changer in promoting efficiency in the judiciary, including resource utilization and expanding access, the slow pace of digitization poses a threat to this potential.

8. SYNTHESIS CHAPTER: SUMMARY OF BINDING CONSTRAINTS

This chapter synthesizes the key findings of the report and identifies five binding constraints that curtail the effective operation of the Judiciary.

8.1. Binding Constraint No. 1: Chronic Underfunding of the Judiciary

Budgetary allocations to the Judiciary are substantially inadequate. This chronic underfunding has crippled critical departments of the Judiciary, including those with HR, infrastructure, and administrative functions. Zambia's economic constraints of the recent past, including the tight fiscal space, explain the inadequate and declining budgetary allocations to the Judiciary. As shown in component three, the subdued economic growth, fragile macroeconomic environment, tight fiscal space, and unsustainable debt levels, mean that Zambia has fewer resources to spend on social sectors and the Judiciary. Zambia's economic growth rate has averaged 2% from 2016 to 2020, while fiscal deficits as a share of GDP increased to 14.5% in 2020 from 5.7% in 2016. Most notably, Zambia has also been buckling under an increasingly heavy debt burden over the last decade, culminating in a public debt-to-GDP ratio of 117% in 2020.

These economic and fiscal conditions indicate that after servicing its debt obligations, Zambia has virtually nothing left to spend on other sectors of the economy, as is evidenced by the declining budgetary allocations to the Judiciary. As detailed in component three, Zambia spends a paltry 0.2% of its GDP on judiciary services on average. Additionally, the share of judiciary allocations in the total budget averaged 0.6% per year. Although there are no clear financing benchmarks for the Judiciary in Africa, anecdotal evidence indicates that the best practice worldwide is to allocate at least 2% of the national budget to the sector.³² For instance, OECD judiciary spending averages 1.9% of the budget (World Bank, 2020). It should be noted that there are no comparable statistics for the region or Sub-Saharan Africa. The severe funding gaps are also reflected in very low per-person expenditures on judiciary services. As component three reports, the Judiciary spent an average of K24.51 (\$1.99) on justice services per person per annum between 2016 and 2020. These statistics provide insight into the financial constraints facing the Judiciary.

There is also a lack of cooperating partner (CP) support for the Judiciary. The fact that the Government accounts for the bulk of judiciary financing (almost 100%) magnifies the severity of funding deficiencies. Unlike sectors that have active donor participation, such as health and education, the Judiciary relies heavily on Government funding. This reliance undermines judiciary independence and exposes it to exogenous economic shocks and fiscal constraints. These shocks and constraints could explain why the Judiciary does not receive all its budgetary allocations. For instance, between 2016 and 2020, the Treasury disbursed 93.6% of the allocated funds to the sector. Furthermore, disbursement variances ranged from -15.3% to -0.1% over the period. The key drivers of disbursement of infrastructure funds and expenditures on circuit sections are delayed disbursement gaps.

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<http://www.parliament.go.ke/national-assembly-judiciary-hold-consultative-forum-agree-ringfence-jsc-budget>

A deep dive into judiciary spending patterns reveals that personnel emolument accounts for the majority of the judiciary budget, leaving a minuscule amount of funds for capital projects. Between 2016 and 2020, personnel emoluments accounted for 72.4% of the judiciary budget compared to 1% and 0.1% for infrastructure and capital projects, respectively. Detailed expenditure analysis is provided in component three. The volatile disbursement of funds is also of concern, especially for capital projects. For instance, only 5% of the total capital expenditure was released in 2019 compared to 90.9% in 2020.

These funding gaps have profoundly debilitating effects on the administration of justice in Zambia. The chronic underfunding has stifled judiciary operations and contributed to inefficiencies. Contemporaneously, these funding-induced challenges culminated in a deterioration of access to justice indicators as shown in component two. As discussed in component four, inadequate funding that manifests in infrastructure and HR deficits contributes to glaring inefficiencies in the Judiciary. For instance, productivity averaged 60% across all courts during the review period.

The findings from all components of this study demonstrate that chronic underfunding is the most significant binding constraint to effective and efficient justice delivery. For the Judiciary to operate effectively, it needs sufficient funding. However, the economic slump and Zambia's unhealthy fiscal position present challenges for resource mobilization in the Judiciary. Thus, calls for increased funding to the judiciary should be complimented with efficiency-enhancing measures including digitization, devolution, and effective M&E systems.

8.2. Binding Constraint No. 2: Limited Access to the Court System

Limited access to court is a significant barrier to service delivery in the Judiciary. Limited access is eventuated at two levels: first, the limited geographical reach of the court system and, second, the limited access to the courts created by the economic, information, and structural barriers discussed in component two.³³ Both of these levels are discussed below.

Limited geographical reach: The geographical reach of courts, at all levels, is a significant binding constraint to service delivery in the judicial system. At the lower levels of the court hierarchy, many communities do not have a functioning Local Court, since a significant number require construction or rehabilitation. Communities without a functioning Local Court must travel long distances to access a working court. At the Subordinate Court level, the statutory establishment per district is a distant reality: 53 districts do not have a Subordinate Court at all, and the distance between districts is considerable. The Small Claims Court does not serve the entire country but only operates from Lusaka, Ndola, and Kitwe.

At the High Court level, while recent plans to extend the geographical reach to five additional provincial centers will improve access, the specialized divisions of the High Court are still geographically restricted. The Commercial Court is based only in Lusaka and Kitwe, while the Industrial Relations and Family Court divisions are based in Lusaka alone.

It is undeniable that service delivery in the judicial sector is affected by the geographic locale of justice institutions. When justice institutions are physically remote, the barriers to justice are greater especially if transportation is poor or unaffordable. On the whole, most formal courts are located in urban centers and require physical access; no virtual court filing or attendance is currently possible. Populations in rural communities are therefore limited in their ability to access highly centralized justice institutions.

³³ High cost of legal services, limited legal aid, and legal information inequity.

Economic, information, and structural barriers to access: The complexity of the court and legal system, high costs of litigating, limited legal aid offerings, and legal information asymmetries mean that most Zambians are unable to meaningfully access the formal court system. The disproportionate impact of these barriers on the justice needs of vulnerable and marginalized groups like women, prisoners, and persons with disabilities cannot be overemphasized. The double vulnerabilities and structural injustices that arise due to membership of an underserved and historically marginalized group render members of these groups more vulnerable to an already malfunctioning justice regime.

8.3. Binding Constraint No. 3: Inefficiency and Ineffectiveness

Across all courts, the efficiency and effectiveness of service delivery in the judicial system are hampered by the following key challenges: inadequate infrastructure, staff shortages and gaps in institutional management, and data collection and analysis deficiencies coupled with ICT-related challenges. These are summarized in turn.

a. Inadequate Infrastructure

Across the country, court infrastructure has not kept pace with population growth trends and increased demand for judicial services. The effective administration of justice presupposes a basic level of infrastructure, beyond “bricks and mortar” to also include meaningful access to the full amenities of legal research, such as up-to-date national and regional Law Reports, Case Digests, and peer-reviewed legal journals and books.

At all levels of the court system, sharing of court rooms and office space impedes the efficient processing of cases and has a significant bearing on the ability to deliver meaningful justice to local communities. Much of the existing infrastructure is debilitated and outmoded. At the Subordinate and Local Court level, many courts are housed in structures that are inappropriate for court business. Leaking roofs, broken windows, lack of transport, ill-equipped courtrooms and offices, lack of water and electricity, and poor sanitation are common complaints. Similarly, judicial officers at all levels of the court system bemoaned their lack of access to up-to-date legal research materials. Court libraries are sparsely stocked, out of date, and do not collect or curate complete sets of judgments rendered by the Zambian courts.

At the Superior Court level, multiple judges share a single court, and support staff does not have adequate office space from which to operate. Specialized Courts that should be housed in separate structures share space with other courts, leading to delays in case disposal, overcrowding at court, and unreasonably long waiting periods for detainees. The High Court has buildings in just five of the ten provinces in which it operates. In the provinces in which it has no premises, the High Court shares space with the Subordinate Court, further aggravating space challenges at the Subordinate Court.

b. Staff Shortages and Institutional Management Gaps

There are acute adjudicative and administrative staff shortages that undermine efficiency and effectiveness at all levels of the Judiciary. Between 2016 and 2020, the Judiciary employed 28 staff per 100,000 persons in the overall population compared to the authorized establishment of 37 per 100,000 persons. Although the staffing shortages declined slightly between 2018 and 2020 (from 27% to 23%), the period between 2020 and March 2021 recorded a sharp rise in recruitment needs. Specifically, the staffing gap increased to 2,700 positions (a 39% vacancy rate). Component five estimates that K136.2 million (26% of the Judiciary budget) would be needed to fill this staffing gap.

When it comes to adjudicators specifically, no court is operating at the establishment level. Adjudicative shortages are particularly acute at the lower court level. These shortages have led to unrealistic workloads, with adjudicators lamenting that high caseloads lead to delays, and compromise the quality of adjudication and judgment writing. On the administrative side, a lack of administrative support in the offices of the Chief Justice, Deputy Chief Justice, the Chief Administrator, and the Judges-in-Charge undermine the effectiveness of these offices. Thus, while the office of the Director of Court Operations exists, there are no attached officers to the Directorate, and therefore several aspects of court operations, including records management, court reporting, and the management and tracking of cases in high-volume courts, remain a challenge.

Beyond unfilled judicial and administrative posts, the Judiciary is missing core managerial capabilities. There is no management strategy within the Judiciary to maximize operational efficiency around core strategies and milestones. The institutional arrangements within the Judiciary have not been evaluated against technological and economic advances and evolving risks in the external environment. Additionally, the organizational design of the institution and the human resource systems that support it have not been rationalized against the core business and mission of the Judiciary which is the fair and equitable resolution of disputes in a reasonable time. There is thus little reference point for process adaptation to monitor and maximize performance at different levels of judicial activity.

c. **Data Deficiencies and ICT Gaps**

Significant ICT interventions are necessary to improve the efficiency and effectiveness of the court system. While there have been two notable donor interventions in this area (e.g., the ZAJIS and ICFs projects), the areas of court reporting, record management, case management, judgment sharing, and court automation are in acute states of disrepair.

As of 2019, only 113,831 case records (6%) were digitized. KIIs also revealed that the digitalization process had not been rolled out to the whole country. The slow deployment of the digitization process is a significant impediment to actualizing sound PFM practices and enhancing service delivery. Further, the inequitable distribution of ICT facilities and projects has contributed to widening the digital divide between rural and urban areas. Inevitably, rural areas lag far behind in actualizing good PFM practices.

There is inadequate court reporting technology at all court levels. While there is a partially implemented records management system in Lusaka, there is no case management system in place at all for the Judiciary of Zambia. These systems are an essential part of judicial service delivery as they provide a centralized way to manage and track cases and, if installed country-wide, can help the administrative headquarters of the Judiciary monitor case processing and staff productivity in various geographic locales. Informants reveal that no such monitoring currently takes place. Further, a case management system would help ameliorate the misplacing of case files and records which have become endemic in the Zambian court system and may provide opportunities for corrupt activities.

The ICT situation is particularly dire in lower courts, as the superior courts have been the biggest beneficiaries of past ICT investments and interventions. Many Subordinate, Local, and Small Claims Courts lack sufficient basic computing facilities like laptops and printers. Available equipment is frequently out of service or missing basic inputs (such as toner for printers).

This report uncovered glaring data inconsistencies and gaps with a bearing on judiciary financing and efficiency. The data issues include incomplete data, inconsistencies in key judiciary indicators across data sources, and a lack of granular level data. The data gathering process also exposed striking data gaps and duplications in some indicators. Most judiciary data is stored in manual systems, contributing to data inconsistencies across sources, and lags in data capture. Accordingly, the study relied heavily on administrative data that was manually extracted to obtain granular (court level) data on judiciary spending, HR, and other key variables. Unfortunately, this manual data extraction is susceptible to entry errors.

These data deficiencies limited the depth of analysis and have a bearing on the specificity of the recommendations of this report. Data inadequacies inhibit effective planning, budgeting, and robust resource mobilization for the Judiciary. Further, data deficiencies hamper a detailed analytical understanding of the challenges faced by the Judiciary.

In short, responsible decision-making and strategic planning should be data-driven and evidence-based. To illustrate, consider the following critical decisions and actions that require comprehensive and high-quality data:

- Making a strong case for greater resource allocations to the Judiciary to relevant government agencies, ministries and CPs and donors.
- Improving management of existing human resources (e.g., improved judicial workload distribution, improved supervision of judicial officers and court staff, and rationalized judicial officer deployment that corresponds to justice needs).
- Enhancing processes for resource mobilization (e.g., examining the collection and use of court fees and exploring whether there is scope to raise more revenues by reforming or increasing court filing fees without prejudicing the poor).
- Ascertaining court infrastructure and human resource needs. Such as the number and location of courts and adjudicators needed. There is no evidence to suggest that the statutory establishment for the number of courts and judicial officers is data-driven. Much of the statutory establishments for different courts in Zambia were legislated years ago in vastly different economic and social contexts. Population growth, the changing economic environment, technological advancements, the increasing specialization of the Judiciary, the emergence of new districts, and evolving concepts of access to justice and judicial reform all point to the need for establishment numbers that correspond to the needs and demands of justice.

All in all, to unlock the true potential of the Judiciary, future reforms, including performance, expenditure, and recruitment issues, must be evidence-based and grounded in empirical research.

8.4. Binding Constraint No. 4: Judicial Training and Professional Development

Failure to adequately provide professional development programs for judges and support staff adversely impacts service delivery. Paltry amounts have been allocated to staff training and professional development programs during the review period of 2016-2020. For example, in 2020, only K48,235 was allocated from a total budget of K516,346,304, translating into 0% of total judiciary spending.

Informants across the board bemoaned the lack of inductive and ongoing training for adjudicative and administrative staff alike. For example, the Small Claims Court informed that the last training for Commissioners was conducted in 2012, and five Commissioners have not had any training at all. Another informant revealed that when they joined the Judiciary, they were immediately given a box of files to manage, without even so much as a tour of the building. Owing to substantial resource constraints, their induction came two years later. Informants also revealed that sometimes judges are not aware of substantive changes to the law, which can have a significant impact on their accurate consideration of ongoing cases.

The need for consistent and relevant training for all adjudicative and non-adjudicative staff is crucial to improving the knowledge base of the courts, thereby directly increasing efficiency and effectiveness in case processing and adjudicative matters.

8.5. **Binding Constraint No. 5: Public Trust in the Judiciary: – Accountability, Integrity, and Independence**

Accountability is foundational to the exercise of judicial authority under the Zambian Constitution, with article 118 declaring that “[t]he judicial authority of the Republic derives from the people of Zambia and shall be exercised in a just manner and such exercise shall promote accountability”. The study has revealed that if the constitutional requirement is to be fulfilled, judicial accountability requires strengthening. In its absence, there is a growing lack of public trust in the Judiciary’s ability to deliver justice independently, impartially, and effectively.

Perceptions of judicial corruption in Zambia undermine the Judiciary’s legitimacy. While many play a role in delivering justice, “[o]nly an independent (impartial) and incorruptible judiciary can fulfill that role of safeguarding the rights of society and render justice based on law and evidence” (Kaaba, 2015). As noted in the report, allegations of corruption against a small number of the Judiciary, along with perceived unaccountability of judges for such behavior, have dented the Judiciary’s standing. This is demonstrated by reports showing high levels of perceived corruption in the Judiciary (Afrobarometer, 2021) and significant political interference in court business (Freedom House, 2021; Bertelsmann Stiftung’s Transformation Index, 2020). It is also important to note here that these integrity concerns extend to non-adjudicative court staff such as court marshals and clerks of court. Moreover, the failure to publish court judgments undermines public trust and confidence in the Judiciary.

Similarly, weak legislative frameworks for the protection of the independence of the Judiciary have been identified in both literature and interviews as a key constraint to effective accountability. This includes legislation on the process for the appointment of judges and the appointment of members of both the JSC and the JCC.

Gaps in the legislative basis and operations of the JCC have diminished its ability to function as the designated body to improve the Judiciary’s accountability. In particular, the JCC:

- lacks the legislative mandate to investigate and act decisively on the conduct of lower-level judicial officers;
- lacks resourcing to establish a strong presence and investigative capacity at the district level across Zambia; and

- does not publish regular information to inform the public about its ongoing work to hold judicial officers accountable where complaints are made.

Acknowledging the intense criticism that the Judiciary has faced in recent times, the Chief Justice recently spoke of the need to strengthen accountability to restore public trust:

If, as we must, we are to redeem the image of the Judiciary and strengthen its accountability to the people of Zambia, it is critical that we should all individually and collectively make a concerted effort to deliver an improved quality of service to users of our courts. In this connection, the comportment of our adjudicators is particularly critical. It is vitally important that all adjudicators are decent individuals, honest in their work and possessing of integrity and a sound knowledge of the law. (Chief Justice Malila, 2021)

Finally, to effectively assess court performance and hold the Judiciary to account, accurate and quality reporting on judicial activities is essential. The poor quality of annual reporting described in this report undermines the usefulness of reporting as an accountability tool.

9. RECOMMENDATIONS AND CONCLUSION

The synthesis chapter identified key binding constraints affecting service delivery in Zambia's formal court system. This section formulates a set of near- and medium-term actionable recommendations to address the identified constraints. These recommendations are summarized in Table 33.

9.1. Sustainable Financing of the Judiciary

If Zambia is to enhance the performance of its justice system, adequate and sustainable funding is crucial. However, component three indicates that budgetary allocations have been on a downward trajectory over the reference period (2016-2020). In real terms, allocations to the Judiciary declined by 4.9%, from K385.94 million in 2016 to K367.20 million in 2020. This persistent underfunding has had debilitating effects on critical functions of the Judiciary, including HR, infrastructure, and administration. The Government and development partners must increase budgetary allocations to the Judiciary.

However, given the negative association between government financial dependence and judicial independence, the Judiciary needs to be as financially self-sustaining as possible. This calls for a robust and integrated resource mobilization strategy for the Judiciary. One way is to explore the possibility of mobilizing revenue by reforming or increasing court filing fees while ensuring that access for the poor and other vulnerable groups is not impeded. The judiciary should also explore other options to widen its revenue base.

Judiciary funding gaps can also be narrowed by: enhancing budget performance in the MoFNP and within the Judiciary to enhance efficiency; developing an efficient expenditure mechanism within the Judiciary; and examining the structure of the judiciary budget to seek options to readjust resource allocation across court levels and expenditure categories to correspond to evolving judicial sector priorities.

This report describes the planning, reporting, and budget inefficiencies that have a bearing on PFM in the Judiciary. The Judiciary does not have a costed strategic plan to guide its operations. This calls for the crafting of such a plan, which can lay out the funding needs over several years and be used for decision-making in the annual budget cycle. A costed strategic plan will enhance planning and budget performance and efficiency in managing judiciary resources.

Actualization of the decentralization process is crucial for effective resource mobilization and efficient management. The judiciary must accelerate the decentralization process to foster efficiency in the utilization of resources, broaden its revenue base and enhance service delivery. As already alluded to, a sustainable and robust resource mobilization strategy is critical for judicial independence, whose benefits cannot be overstated. Specifically, this report identified dilapidated infrastructure, particularly at the lower court level, as a hindrance to efficiency and effectiveness. Therefore, the Judiciary should consider devolving responsibility for maintaining infrastructure to the lower level of the court hierarchy to make the system more responsive to local needs, and to prioritize courts that serve the greatest number of people.

9.2. Increasing Access

Extending geographical reach: Increasing court presence across the country can go a long way toward ameliorating some of the accessibility challenges discussed in this report. In the medium term, it is recommended that the legislated minimum number of Subordinate Courts be established. If this is done, the justice gap that arises from 53 districts not having a Subordinate Court, can be bridged. So too, rehabilitation of non-functioning Local Courts will ensure that communities that currently lack a working court are serviced.

At the superior court level, decentralizing the specialized divisions of the High Court to provincial centers will increase access to these court services. Similarly, extending the reach of the Small Claims Court beyond Lusaka, Ndola and Kitwe will ensure that a greater section of the population has access to the innovations of this court.

Enhancing Citizen Access: Capacitating state and non-state entities engaged in the provision of legal and quasi-legal services in Zambia is a must. Legal aid providers that focus exclusively or predominantly on the legal empowerment of traditionally vulnerable groups (such as prisoners, women, persons with disabilities, etc.) must be prioritized. To address legal information asymmetries, logistical or technical support can be provided to CSO-driven legal awareness campaigns that seek to raise awareness around human rights and constitutionally guaranteed rights. The upscaling of LSUs staffed with paralegals at a greater number of Subordinate Courts can go a long way toward enhancing legal aid provision to indigents.

To improve citizens' access to the courts and the availability of court information, the Judiciary's website should house simplified information that helps people understand and navigate the court system, particularly for self-represented users and litigants. Periodically-administered court user surveys are also a useful tool, as they provide a snapshot to policymakers of the perceptions and opinions of a cross-section of users. A better understanding of court user experiences can facilitate informed decision-making around improving these experiences.

9.3. Enhancing Efficiency and Effectiveness

To address the inefficiencies and ineffectiveness described in this report, the following recommendations in the key areas of infrastructure, human resources, and data management and ICT are suggested below.

Infrastructure

Improving court infrastructure is closely tied to extending geographical reach. Interviews reinforced the urgent need to prioritize infrastructure in the near and medium-term. As mentioned in 9.2, there is an urgent need to construct and rehabilitate Local Courts (Table 15) and to establish or construct the outstanding Subordinate Courts. To improve the GBV courts' effectiveness, a standalone facility in a high-density area of Lusaka would ensure greater access to the court's service.

For the superior courts, the Constitutional Court requires its own premises with sufficient courtroom and office space. So too, specialized divisions require designated premises. In the general division of the High Court in Lusaka, additional courtrooms that correspond to the number of cases processed by the court, and additional office space that corresponds to the number of adjudicative and administrative staff, are imperative. Further, most existing countrywide court structures at the superior court level have not been refurbished since construction and require rehabilitation and modernization.

As explained in the report, the Chief Justice recently designated resident High Court judges of the general division to the five provincial centers of Solwezi, Mongu, Chipata, Kasama, and Mansa. However, there are no High Court premises in any of these centers. Informants relayed that while land has already been acquired to construct premises in the five provincial centers, funding for the actual construction is needed.

Infrastructure needs also include the procurement of vehicles in the various districts in which court business is conducted, particularly at the Subordinate and Local Court level. While there are a limited number of vehicles available at the provincial level, informants advised that there are no judiciary vehicles available at the district level. The lack of transportation greatly impedes the monitoring and supervision of activities at lower courts and slows the efficient running of aspects of court business that require transporting personnel or documentation. At the Local Court level, informants advised that a motorbike stationed at each Local Court would allow clerks to serve process without inordinate delay, and without reliance on traditional authorities.

Finally, improved research infrastructure to support the core functions of judicial officers, namely, legal research and judgment writing, is also vital. Court libraries must be modernized and regularly supplied with up-to-date digital and print legal research materials (Law Reports, journals, periodicals, digests, statute books, etc.) that judicial officers can draw upon to improve their research functionalities, decision-making, and judgment writing. Court librarians must also be capacitated to support the research needs of judicial officers.

Staffing and Institutional Management

Critical staff shortages at both the administrative and adjudicative levels must be addressed. In the offices of the Chief Justice, Deputy Chief Justice, the Chief Administrator, and the Judges-in-Charge, the provision of administrative support through the employ of Executive Assistants will enhance the effective functioning of these offices. On the adjudicative side, virtually all courts are not operating at the establishment level. The increased demand for judicial services and unrealistic workloads of judges and magistrates all point to the need for the recruitment of additional adjudicative staff. At the Small Claims Court level, employing a hybrid of full-time and part-time commissioners can ensure that the SCC can function even in remote areas where legal practitioners are few or non-existent. In the short term, the Judiciary can also explore the feasibility of redeploying judicial staff to different courts on a rotational basis in a manner that corresponds to identified needs (i.e., addressing backlogs and projected workloads).

The establishment of a functional Court Operations Directorate with attached officers can improve the tracking and management of cases, particularly in high-volume courts such as the Subordinate Courts. As stated earlier in the report, while there is a Director of Court Operations in the court system, there is no attached directorate. The role of the Directorate would be to track cases from the time of recording until their conclusion and to send judgments and records of appeal to the central administration. Currently, while the Chief Registrar also undertakes the functions of “Director of Court Operations”, no actual Directorate for Court Operations exists, and no staff is allocated to this important function.

At the institutional level, concerns about the institutional management of the Judiciary require a long-term diagnostic study that can systematically review its various operational departments and propose tailored strategies to maximize operational efficiency and oversight around core strategies, outputs, and milestones.

Data Management Capacities and ICT Gaps

Significant ICT gaps and a lack of strategic planning point to the need for a digital transformation strategy that can guide the Judiciary's near and long-term actions in this space. Of substantial importance, this digital transformation strategy will act as a roadmap for determining which aspects of the court's systems to digitize, how this should be operationalized, the key stakeholders that must be involved, the setting of realistic timeframes, and the mechanisms for regular implementation monitoring. It must also include a strategy to enhance the digital literacy of all judicial and non-judicial staff, to ensure that improvements made are accompanied by well-capacitated staff for smooth implementation of resultant IT processes. Plans for the completion of the incomplete digitization project should be included in this digital transformation strategy.

A case management system must be installed across the Judiciary with staff members capacitated to use and manage these systems. The case management system must have two aspects to it: first, it should act as an internal case and record management system for the Judiciary and, second, it should function as a public-facing system to allow citizens to utilize judicial services online including through e-filing. It is understood that countries such as Uganda and Kenya are also moving towards such systems to improve court efficiency and accessibility.

Additionally, law reporting must be enhanced through the purchase of stenotype machines and the implementation of court reporting technology. Finally, computing facilities in courts where these are lacking must be provided or supplemented.

The judiciary must join forces with key stakeholders, including development partners, to enhance data collection, management, and analytical capacities. This includes institutionalizing the information collection, data management, and analytical systems. A potential solution is to create a department focused on data and knowledge management within the Judiciary. Custodians of judiciary data must be adequately resourced and capacitated through regular training.

Given the crucial role of ICTs in information gathering and management, there is a need to augment investments in the Judiciary ICT sector. This also calls for a speedy rollout of the digitization process, which has a bearing on timely data availability and quality of statics. All these processes are crucial for evidence-based decision-making and planning.

Easy access to comprehensive and quality data is vital for timely analysis. This is particularly important given the ever-evolving justice sector landscape. Therefore, there is a need for strengthening of data collection for enhanced evidence-based decision-making in the judiciary. Additionally, there is a need to improve the Judiciary websites and electronic resources and create an electronic database for the justice sector as a whole. Additionally, there is a need to explore the integration of HR and financial databases to enhance data collection and accessibility.

Court Processes and Procedures

To maximize efficiency gains, a comprehensive assessment of laws, rules, and procedures affecting court operations should be undertaken. This should be in reference to a range of issues, for example, the implementation of ICT innovations to conduct court business while ensuring the security of information. To accommodate the use of digital technology, amendments to civil and criminal procedural legislation may be required. Similarly, rules issued by the Chief Justice may need to be implemented. When it comes to court efficiency, inefficiencies must be examined in the light of procedural complexity, and a diagnostic of rules, procedures, and processes that promote efficiencies must be undertaken.

These assessment exercises may require the engagement of various stakeholders, including the National Assembly of Zambia, for any legislative changes.

9.4. Judicial Training and Professional Development

Increasing caseloads, the creation of complex and technical specialized divisions, technological advancements, the growing managerial function of judges, and rapid developments in substantive law, all call for periodic and specialized training.

While not yet operational, the Judiciary is planning for the establishment of a Judicial Training College to oversee the vast training needs of the organization. The College would focus on judicial education, professional training, and research (Judiciary Annual Report, 2020). Given the highly specialized nature of adjudicative work, it is envisaged that the College would be closely run by the Judiciary to ensure course and training relevancy. Informants also noted that the College could incorporate experts to conduct specialized training where needed, for example, in the Commercial Court, experts could deliver courses on complex commercial issues including the securities industry and capital markets.

The College would not only train adjudicative officers but would also train non-adjudicative judiciary staff including administrators, research advocates, librarians, and clerks. Various informants revealed that many court staff is not adequately prepared for their roles, for example, clerks of court have a key role to play in the processing of cases but are usually unoriented in the procedures involved.

The judiciary indicates that establishing the College is a “top priority”, and an *ad hoc* committee has taken preliminary steps towards its establishment, including conducting benchmark activities with other countries, including England, Wales, and Canada. The judiciary is “already engaging in preparatory activities with a view to training judges to facilitate judicial training at the College” (Judiciary of Zambia, Justification for the Judicial Training College, n.d.). It is understood that similar judicial training colleges are being established in other South African Development Community countries such as South Africa and Tanzania.

Financial and technical support for the establishment of the Judicial Training College is a critical need. The judiciary is currently liaising with the MoJ and the MoFNP on the steps necessary to operationalize the College. Informants, however, revealed that funding of the College is a crucial concern.

To accompany the implementation of the Judicial Training College, the Judiciary should develop and execute a comprehensive onboarding and continuing professional development program for judges, magistrates, and other court staff. Such a program may include:

- Remote learning options, including recorded online training; and
- Peer-to-peer learning through the exchange of individuals, and institutional good practices and innovations within courts, and across court types (e.g., dissemination of good practices of the Commercial Division of the High Court to the other divisions).

Over time, once the training program is in place and operating effectively, it should be made mandatory for judicial officers to undertake a specified minimum number of hours of professional development training every year to ensure that judges are continuously trained and up to date on all legal developments.

9.5. Public Trust in the Judiciary: – Accountability, Integrity, and Independence

Noting that accountability of the Judiciary requires considerable strengthening, wide-ranging internal and external interventions are necessary to ensure that strategies and structures within and outside the Judiciary promote good accountability practices.

Internal - In terms of internal accountability, the Chief Justice has the constitutional mandate to manage and supervise the Judiciary. The monthly returns submitted by all adjudicative officers in the country are a critical monitoring tool that provides key information about judicial productivity. However, between running a busy office and performing adjudicative functions, informants revealed that the office of the Chief Justice lacks the time and administrative capacity to review returns, which undermines the adequate supervision of adjudicators across Zambia. As such, the Chief Justice requires dedicated staff that can assist with the interrogation of returns and brief the Chief Justice on matters that require attention.

In this respect, the Judiciary may also wish to explore options for introducing a performance management framework or system that tracks and evaluates the performance of individual judges and magistrates (and other select court staff) against a specified list of key performance indicators. This performance management framework could also include specified sanctions or penalties that may apply when performance concerns are identified.

The quality of annual reporting in the Judiciary must be improved, and regular audits of reporting practices conducted. Some ways to improve the quality of the annual reports include adopting detailed methods of data presentation and standardizing the report format so that trends are easier to track over time. In this regard, the 2017 – 2020 Annual Reports must be audited to resolve the duplication, inconsistencies, and omissions. Further, the missing 2016 Annual Report must also be published, so that a complete picture of judiciary activity for the five-year period of 2016-2020 emerges.

Outreach initiatives that connect the courts directly to the public can promote a greater understanding of the role and functioning of the Judiciary. This would help build linkages and trust between the Judiciary and citizens, and arm citizens with the information needed to utilize these forums when needed. This outreach can be in relation to specific functions of specialized lower courts, such as promoting understanding of GBV fast-track courts and SCCs or more broadly targeted to navigating the general court system.

It is imperative that the Judiciary devises systems and strategies for the free and public access and dissemination of judgments and rulings across all courts of records. As discussed in component four, free and unrestricted access to judicial decisions is a core element of a working democracy and an important accountability tool for the public.

In the long term, there may be a need for the Judiciary to consider broader education on integrity within the legal profession to ensure that high ethical standards are internalized and applied across the board. To this end, the Judiciary could work closely with institutions such as the Law Association of Zambia and Zambian law schools to integrate ethics training for lawyers and law students, which should include mandatory training on corruption and enforcing integrity standards.

External - The lacuna that exists in relation to the powers of the JCC over judicial officers that are lower than a judge must be addressed. The JCC requires legislative jurisdiction to handle the removal of lower judicial officers, including Subordinate and Local Court Magistrates. Further, there is a need for public outreach on the work of the JCC to improve general awareness about the mechanisms in place to achieve judicial accountability.³⁴ Informants revealed that while the JCC handles a fair number of complaints every year, low awareness of the JCC's work gives the impression that judicial officers are not disciplined, or that complaints by members of the public are ignored. The recent publicity surrounding the removal and suspension of two High Court judges may go some way in countering perceptions about JCC inaction.

Increasing the overall investigative capacity and the geographical reach of the JCC is also important. JCC presence should be established in district satellite offices to capture complaints at the district level.

Further, the legal framework for the Judiciary should be reformed to enhance its independence, foster greater transparency, and improve accountability of the judicial sector. The reform could involve revisiting laws, regulations, and procedures governing the appointment of judges and the appointment of members of the Judicial Service Commission and the Judicial Complaints Commission. This could also include exploring options for institutionalizing a system with a clear set of rules and criteria for meritocratic appointment and career progression in the Judiciary, which rewards integrity, a strong track record of performance, professional development initiatives, and relevant experience.

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These public outreach efforts can of course preserve the anonymity of complainants and of judicial officers cleared of wrongdoing.

Table 33: Summary of Near- and Medium-Term Recommendations

Binding Constraint	Recommendations	Implementation Period (Year 1 – 5)	Implementing Body /Partners
Chronic Underfunding	<ul style="list-style-type: none"> Enhance budget performance within the Judiciary. This can also include developing an efficient expenditure mechanism within the Judiciary. <i>(Short Term-Long Term)</i> 	Years 1-5	<ul style="list-style-type: none"> Executive (MoFNP and MoJ)
	<ul style="list-style-type: none"> Devolve functions to lower levels to enhance service delivery and improve PFM. <i>(Short-term)</i> 	Year 1	<ul style="list-style-type: none"> Judiciary (Advisory Committee on Budget and Finance)
	<ul style="list-style-type: none"> Explore the possibility of mobilizing revenue by reforming/increasing court filing fees, while ensuring that access for the poor and other vulnerable groups is not impeded. <i>(Short Term)</i> 	Year 2	<ul style="list-style-type: none"> National Assembly
	<ul style="list-style-type: none"> Devise a robust and integrated resource mobilization strategy for the Judiciary. <i>(Medium Term)</i> 	Year 3	<ul style="list-style-type: none"> CPs/Donors
	<ul style="list-style-type: none"> Increase budgetary allocations to the Judiciary to reduce funding gaps. <i>(Medium Term)</i> 	Year 2-5	
	<ul style="list-style-type: none"> Explore alternative financing arrangements including CPs/Donors. <i>(Medium Term)</i> 	Year 1-5	
	<ul style="list-style-type: none"> Examine the structure of the judiciary budget to seek options to readjust resource allocation across court levels and expenditure categories to correspond to evolving judicial sector priorities. <i>(Medium Term)</i> 	Year 2-5	

Binding Constraint	Recommendations	Implementation Period (Year 1 – 5)	Implementing Body /Partners
<p>Limited Access to the Court system</p>	<ul style="list-style-type: none"> Support the development of simplified informational resources on self-representation and navigating the court system; initiate self-representation desks at courts. <i>(Short Term)</i> Provide logistical and/or technical support to CSO-driven legal awareness campaigns that seek to raise awareness around human rights and constitutionally guaranteed rights through the provision of training and the running of information groups. <i>(Short Term)</i> Conduct a “legal needs survey” to obtain a qualitative understanding of the justice gap in Zambia and create a diagnostic that can inform policy shifts and stakeholder dialogue/engagement. <i>(Short Term)</i> Extend the reach of the Subordinate Court by establishing Subordinate Courts in districts without a court (as per the statutory requirement). <i>(Medium Term)</i> Devolve the specialized divisions of the High Court to provincial centers across the country. <i>(Medium Term)</i> Extend the reach of the Small Claims Court beyond Lusaka, Ndola, and Kitwe. <i>(Medium Term)</i> Capacitate state and non-state entities engaged in the provision of legal and quasi-legal services in Zambia, focusing particularly on the legal empowerment of traditionally vulnerable groups disproportionately impacted by the high cost of legal services (e.g., prisoners, women, the disabled, etc.). <i>(Medium Term)</i> Increase coverage of LSUs 	<p>Year 1</p> <p>Year 2</p> <p>Year 2</p> <p>Year 1-5</p> <p>Year 3-5</p> <p>Year 3-5</p> <p>Year 1-5</p>	<ul style="list-style-type: none"> Executive (MoFNP) Judiciary (Chief Justice;³⁵ Advisory Committee on Infrastructure; Advisory Committee on Court Operations and Administration; Advisory Committee on Administration of Civil and Criminal Justice) LAB CSOs CPs/Donors Research institutions

Binding Constraint	Recommendations	Implementation Period (Year 1 – 5)_	Implementing Body /Partners
Inefficiencies and Ineffectiveness	<p><i>Infrastructure</i></p> <ul style="list-style-type: none"> • Procure vehicles at the district level and procure motorbikes for the use of court messengers at the Local Courts. (<i>Short Term</i>) • Modernize and expand court libraries, and regularly supply them with up-to-date print and digital legal research materials (Law Reports, journals, periodicals, digests, statute books, etc.) that adjudicators can access; capacitate court librarians to support the research function of adjudicators (<i>Short Term</i>). • Establish a standalone GBV court in a high-density area of Lusaka, alongside the planned scaling up of GBV courts around Zambia discussed earlier in this report. (<i>Short Term</i>) • Construct Subordinate Courts in districts that do not have a Subordinate Court. (<i>Medium Term</i>) • Construct and rehabilitate Local Courts in need of construction and rehabilitation as per Table 15. (<i>Medium Term</i>) • Construct High Court premises in provincial centers without High Court infrastructure. (<i>Medium Term</i>) • Renovate and/or refurbish the existing infrastructure of the superior courts; increase the number of courtrooms and office space. (<i>Medium Term</i>) • Construct/establish designated premises for the Constitutional Court, the Family and Children’s Court, and the Industrial Labour Relations Court. (<i>Medium Term</i>) 	<p>Year 1</p> <p>Year 1</p> <p>Year 2</p> <p>Years 1-5</p> <p>Years 1-3</p> <p>Years 3-5</p> <p>Years 4-5</p> <p>Years 4-5</p>	<ul style="list-style-type: none"> •

Binding Constraint	Recommendations	Implementation Period (Year 1 – 5)	Implementing Body /Partners
Inefficiencies and Ineffectiveness	<p><i>Staff Shortages and Institutional Management Gaps</i></p> <ul style="list-style-type: none"> Establish administrative support systems for key offices in the Judiciary; namely, in the form of Executive Assistants for the offices of the Chief Justice, Deputy Chief Justice and Chief Administrator, and Judges-in-Charge to perform administrative functions. (Short Term) Commission a long-term institutional management diagnostic study to enhance the administration and management of the Judiciary. (Short Term) Establish a Directorate of Court Operations staffed by court operations officers, whose role is to proactively manage cases to enhance efficiency by resolving unwarranted delays. (Short Term) Recruit additional judicial officers to meet establishment levels at the Court of Appeal, the High Court, Subordinate Court, and the Local Court. (Medium Term) 	<p>Year 1</p> <p>Year 1</p> <p>Year 2</p> <p>Year 3</p>	

Binding Constraint	Recommendations	Implementation Period (Year 1 – 5)_	Implementing Body /Partners
Inefficiencies and Ineffectiveness	<p><i>Data collection, collation, and analysis capacity and ICT Gaps</i></p> <ul style="list-style-type: none"> • Develop a digital transformation ICT strategy for the Judiciary of Zambia (Short Term) • Implement IT case management systems across the Judiciary and capacitate staff to use and manage these systems. (Short Term) • Enhance law reporting through the purchase of stenotype machines and the implementation of court reporting technology. (Short Term) • Provide or supplement computing facilities in courts where these are lacking. (Short Term) • Enhance data management (data collection, storage, and analysis) capacities in the Judiciary to facilitate data-driven decision-making and strategic planning. (Short Term) • Explore the integration of HR and financial databases to enhance data collection and accessibility (Short Term) • Assess the need for reform of procedural laws, rules, and procedures affecting the efficient operations of court operations including issues like the use of digital technology for court business, and the collection and use of court fees. Where recommended changes are within the jurisdiction of the Chief Justice, introduce the changes. For those that require the involvement of other institutions, e.g., Parliament, draw their attention to required action. (Medium Term) 	<p>Year 1</p> <p>Year 1-2</p> <p>Year 1-2</p> <p>Year 1-3</p> <p>Year 1-3</p> <p>Year 1</p> <p>Years 1-5</p>	

Binding Constraint	Recommendations	Implementation Period (Year 1 – 5)	Implementing Body /Partners
Inefficiencies and Ineffectiveness	<ul style="list-style-type: none"> Institutionalize the information collection, data management, and analytical systems (<i>Medium Term</i>). Create/capacitate a department focused on data and knowledge management within the Judiciary and build data processing and analysis capacity among staff (<i>Medium Term</i>) Accelerate the rollout of the digitization process, which has a bearing on timely data availability and quality of statistics (<i>Medium Term</i>) Improve the Judiciary websites and electronic resources and create an electronic database for the Judiciary (<i>Medium Term</i>) 	<p>Years 3-5</p> <p>Year 3</p> <p>Year 3</p> <p>Years 1-5</p>	
Unmet Training Needs	<ul style="list-style-type: none"> Provide technical, financial, and logistical assistance to the envisaged Judicial Training College (<i>Short Term</i>) Financially support orientation programs for incoming judicial officers (<i>Short Term</i>) 	<p>Year 1</p> <p>Year 1</p>	<ul style="list-style-type: none"> Executive (MoFNP and MoJ) Judiciary (Advisory Committee on Budget and Finance; Advisory Committee on Training and Continuing Education) CPs/Donors

Binding Constraint	Recommendations	Implementation Period (Year 1 – 5)_	Implementing Body /Partners
Public trust in the Judiciary	<p><i>Strengthen the JCC to uphold external accountability of the Judiciary:</i></p> <ul style="list-style-type: none"> • Improve public information on the work of the JCC through the provision of annual reports (Short Term) • Support law reform to give the JCC jurisdiction in removal procedures for all levels of judicial officers (Medium Term) • Increase the investigative and operational capacity of the JCC at the provincial and district level (Medium Term) <p><i>Improve internal accountability:</i></p> <ul style="list-style-type: none"> • Recruit qualified support staff in the Chief Justice’s office to support the office’s supervisory function including the auditing and interrogation of judicial returns. (Short Term) • Improve the quality of judicial annual reporting; prepare/publish the 2016 Annual report; audit annual reports of 2017-2020 to resolve duplication, omissions, and inconsistencies. (Short Term) • Provide free and unrestricted access to court decisions from all courts of record by publishing them online in a timely manner (Short Term) • Explore options for introducing a performance management framework that tracks the performance of individual judges and magistrates (and other select court staff) against a specified list of key performance indicators (Medium Term) 	<p>Year 1</p> <p>Year 2</p> <p>Year 2-4</p> <p>Year 1</p> <p>Year 1</p> <p>Year 1</p> <p>Year 3-5</p>	<ul style="list-style-type: none"> • Judiciary (Chief Justice; Advisory Committee on Court Operations and Administration; Advisory Committee on Public Relations and Information) • National Assembly • JCC • CPs/Donors • CSOs

Binding Constraint	Recommendations	Implementation Period (Year 1 – 5)	Implementing Body /Partners
Public trust in the Judiciary	<p><i>Enhance public trust in the Judiciary:</i></p> <ul style="list-style-type: none"> • Support outreach initiatives that connect the courts directly to the public to promote understanding of the role and function of the Judiciary thereby building linkages and trust between the Judiciary and citizens. (Short Term) • Advocate for greater transparency and accountability in the legal frameworks governing the appointment of judges and members of the JSC and JCC (Medium Term) • Strengthen public information, communication, and citizen engagement on the work of the Judiciary generally through developing and implementing a citizen communication engagement strategy and/or hiring communication officers. (Medium Term) 	Year 1 Year 3 Year 1-3	

9.6. Conclusion

This report shares the results of a two-pronged institutional and public expenditure review of the Zambian judiciary. The report explores several factors that underpin and explain the current state of the Zambian judicial sector, including access to justice challenges, financing and expenditure gaps, service delivery issues at each court level, and human resource and infrastructure challenges in the sector.

The review has identified the following binding constraints to service delivery in the Judiciary:

- Chronic underfunding of the Judiciary;
- Limited public access to the court system, particularly, insufficient geographical presence across the country, and economic, information, and structural barriers to the court system;
- Operational constraints, including inadequate court infrastructure, staffing shortages, and institutional management gaps, as well as data and ICT gaps;
- A lack of judicial and professional development training;
- Declining public trust in the Judiciary.

To address these issues, various recommendations have been identified. These recommendations are focused on ensuring sustainable financing to the Judiciary, increasing public access, addressing infrastructure and human resource shortfalls, improving ICT and data systems, developing ongoing judicial training, improving accountability mechanisms, and enhancing the information provided by the courts to the public. The list of recommendations is lengthy: close to 50 actions that can be taken in the near to medium term have been identified. While it is an ambitious list, it is only a starting point for further conversations between the Judiciary, the Executive, and cooperating partners toward the shared goal of improving service delivery in the justice sector. This will, in turn, enhance the operation of the Rule of Law in Zambia, and provide optimal conditions for the improved economic and development outcomes that accompany a strengthened judicial sector.

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