

Appendix 1



LAW ASSOCIATION OF ZAMBIA

ACCESS TO JUSTICE STAKEHOLDERS CONFERENCE **THEME: "ACCESS TO JUSTICE"**

VENUE: PROTEA HOTEL – CHISAMBA

Thursday 18th March, 2008

08:00 – 08:30

REGISTRATION

08:30 – 09:10

OPENING REMARKS

Mr. Elijah C. Banda, S.C, President, Law Association of Zambia

President, South London Law Society

His Excellency the British High Commissioner

His Lordship the Chief Justice of the Republic of Zambia

10:30-11:00

TEA BREAK

11:00-12:00

1. Challenges and opportunities for increased co-operation among Civil Society Organizations for the purpose of improving legal aid services to the indigents in Zambia.

12:00-13:00

2. Linkages between Civil Society Legal Aid providers and Statutory and Government Legal Aid providers

13:00-14:00

LUNCH BREAK

14:00-15:30

3. Standardization and development of paralegal training courses

15:30-16:00

TEA BREAK

16:00-17:00

4. The effective application of the commitment of members of the Law Association of Zambia towards pro-bonowork

5. The development of national policies and strategies on access to justice and legal aid.



Appendix 2

LAW ASSOCIATION OF ZAMBIA

BAR BENCH CONFERENCE PROGRAMME

VENUE: PROTEA HOTEL – CHISAMBA

Thursday 20th March, 2008

08:00 – 08:30	REGISTRATION
08:30 – 09:10	OPENING REMARKS Mr. Elijah C. Banda, S.C, President, Law Association of Zambia President, South London Law Society His Excellency the British High Commissioner His Lordship the Chief Justice of the Republic of Zambia
09:10-09:25	SESSION CHAIR - MR. MICHAEL MUSONDA The Concept of Access to Justice – Speaker Dr.J.B. Sakala, S.C (a) Criminal procedure and Civil litigation (b) Multi Combination of impediments
09:25-10:30	Plenary Session
10:30-11:00	TEA BREAK
11:00-11:35 S.C	Impediments to Access to Justice – Speaker Mr. William Nyirenda (a) The Effect of Adjournments or delays in delivery of Judgments in the quest for access to Justice (b) Adjournments or delays in delivery of Judgments – Views from the Bench by His Lordship The Honorable Chief Justice Ernest Sakala (c) Small Claims Court an Alternative Dispute Resolution and Access to Justice – Speaker - The Honorable Mr. Justice C. Kajimanga
11:35-13:00	Plenary Session
13:00-14:00	LUNCH BREAK

SESSION CHAIR - THE HONORABLE MR. JUSTICE DENNIS K. CHIRWA	
14:05-14:20	Preparation of Civil Appeals Records - Speaker The Honorable Mr. Justice Peter Chitengi
14:20-14:30	Impediments to Access to Justice - Speaker Dr. J.B. Sakala, S.C Length and contents of written submission
14:30-15:30	Plenary Session
15:30-16:00	TEA BREAK
16:05-16:20	Etiquette and Conduct at the Bar – Speaker – The Honorable Mr. Justice E. Chulu
16:20-16:30 S.C	Relationship between the Bar and Bench – Speaker Dr. J.B. Sakala,
16:30-17:45	Plenary Sessions
17:45-18:00	CLOSING REMARKS His Lordship the Chief Justice of the Republic of Zambia Mr. Elijah C. Banda, S.C, President, Law Association of Zambia
18:00-21:00	COCKTAIL



Appendix 3

LAW ASSOCIATION OF ZAMBIA

REPORT ON THE ACCESS TO JUSTICE STAKEHOLDERS' CONFERENCE, HELD ON 18 MARCH 2008 AT PROTEA HOTEL IN CHISAMBA.

This was the first Seminar of its kind to be held by the Law Association of Zambia. The theme for this year's conference was entitled **Access to Justice**.

In attendance were the following organisations:

Law Association of Zambia, South London Law Society, Transparency International Zambia, National Legal Aid for Women, National Legal Aid Board, Paralegal Alliance Network (PAN), YWCA, EPWDA, Caritas Zambia, Legal Resources Foundation, LADA, PRISCCA, NIPA, the University of Zambia Legal Aid Clinic and the University of Zambia School of Law (the attendance list is attached).

At the conference the following topics were discussed.

- (i) 'Current status on legal aid service providers' initiatives presented by Mr. William Mweemba- LAZ project coordinator.
- (ii) The effective application of the commitment of members of the Law Association of Zambia towards pro bono work presented by Mr. Likando Kalaluka- Legal Aid Committee Convenor.
- (iii) Challenges and opportunities for increased co-operation among civil society organisations for the purposes of improving legal aid services to the indigents in society, presented by Mr. Eugene Kabilika representing PAN.
- (iv) Linkage between civil society legal aid providers and statutory and government legal aid providers, presented by Mr Wilfred Mwenya.

- (v) Standardisation and development of paralegal training courses, presented by Ms. Sally Gill and Ms. Pamela Robotham.
- (vi) The development of national policies and strategies on access to justice and legal aid, presented by Mr. Andrew Unger, President of South London Law Society.

Opening remarks

To open the conference the Law Association of Zambia President, Mr Elijah Banda, S.C. noted that LAZ recognises the important role of CSOs in provision of legal aid. He adumbrated that the principle of equality of law is sacrosanct and deeply rooted in our constitution. However, he lamented that the safeguard means little if rights are not enforced. The president also thanked the South London Law Association and the British High Commission for funding the event.

The British High Commissioner advocated for the need to enhance equality before the law and emphasised that lawyers and NGO paralegals in both Zambia and Britain must be encouraged to do pro bono work, in order to reach out to the vulnerable. He said this would immensely contribute towards increased accessibility to high quality professional legal aid advice. Ultimately, individuals that cannot afford expensive private legal services will be able to access justice to a full extent. He commended and welcomed corporation between LAZ and the UK with regards to legal aid service provision because the two countries have a similar common law background.

1. CURRENT STATUS ON LEGAL AID SERVICE PROVIDERS' INITIATIVES.

The project coordinator of LAZ Mr William Mweemba presented a paper on the "*Current status on legal aid service providers initiatives*" which was inspired by the challenges identified during the paralegal mapping exercise carried out in

December 2007. The mapping exercise was carried out by the Paralegal Alliance Network, the Danish Institute for Human Rights and the UNZA School of Law.

The mapping exercise provided an overview of the roles and functions of legal aid service providers in Zambia and the potential for improved coordination and cooperation amongst civil society legal aid providers and with other stakeholders.

The findings were as follows:

The mapping exercise revealed that the legal framework is silent on legal aid services provided outside courts. In other words, there is no national policy regulating activities of paralegals, although of course provision of legal aid is somewhat regulated by the Legal Aid Act and rests with the Legal Aid Board (LAB). Unfortunately, severe constraints faced by LAB still emphasises the importance of CSOs in the provision of legal aid services in the quest to mind the existing gap.

It was further revealed that the lack of the national policy has precipitated the lack of coordination amongst LASPs. Consequently, the quality of services provided by the LASPs can be difficult to monitor and support adequately. It was suggested that there should be maximisation of the legal aid service provision by non-governmental organisations; rather than mere sensitisation, counselling and mediation.

Mr Mweemba extrapolated that the panacea to aforementioned problems lay in having a clear and distinct division of responsibilities and recognition of different strengths of the actors in the field. Another solution, he noted, would be to improve networking which will make it possible to work on standardisation of training and qualifications.

Other challenges identified.

Lack of decentralisation of formal justice system was one of the backlogs identified as being an impediment in the swift dispensation of justice to the indigents in the peripheral areas. For instance, certain areas like Luapula, Northern and Northwestern provinces have no legal practitioners and this entails that all the work is left to the paralegals. This presents a problem in more complicated matters where advice or action by a legal practitioner is needed as the paralegals are only qualified to give advice to on specific legal issues and only to a certain level.

In addition, Mr Mweemba stressed that the potential for collaboration between CSOs and private legal practitioners still needs to be explored in order to enhance quality delivery of legal aid services.

Mr Mweemba informed the delegates that, following the mapping exercise, a meeting and workshop were held to primarily discuss:

- (i) The findings and conclusions of the mapping exercise.
- (ii) The challenges and opportunities in increased corporation among CSOs for purposes of increasing legal aid services to indigents in Zambia

Participants focused on three priority areas of intervention: policy and strategy, casework, and qualification & training.

Policy and strategy

The participants agreed to employ the strategy of fostering stronger dialogue with Government, by taking advantage of any opportunity given to present views and suggestions before government institutions.

Another strategy agreed on was to enhance dialogue and networking among all legal aid providers and their stakeholders. The rationale was to have a better internal organisation by CSOs. It was agreed that they should strategically explore the potential enlargement of the Paralegal Alliance Network (PAN) so that it becomes the structure of coordination among civil society legal aid providers.

Moreover, it was agreed that there should be a deliberate policy of furthering research and analysis on issues impacting on access to justice; inclusive of the methodologies and the need to harness rich sources of information & knowledge with regards legal aid service provision.

Case work

With regards casework, the popular view expressed was that there should be an established mechanism for the promotion of case referrals within the network at different levels. To supplement this effort, there is need for LAZ to develop an effective and systematic monitoring mechanism.

It was further reasoned that a Directory of all legal aid service providers must be developed. This directory must inventorise, in a descriptive form, the mandates of the legal aid providers for ease of referral and collaboration. In addition, it was agreed that there is need to encourage documentation by the paralegals at community levels.

Qualifications for paralegals

It was suggested that the qualification of the paralegals would be dependent on the variety of levels of training and knowledge such as; community-based paralegals, certificate levels of paralegals and Diploma level paralegals.

Generally it was echoed that the task and training needs of the aforementioned, be analysed and defined; based on the principle of '**concentric circles**' model of legal qualifications. The idea was that the basic training, certificate and diploma levels in paralegal studies should be stepping-stones to attaining a degree in law (LL.B).

Current status of government access to justice programme

The participants were of the considered view that the current status of the government programme on access to criminal justice was not comprehensive. Flowing from this, suggestions were made to the effect that criminal justice agencies such as the DPP, the Prisons Service and the Judiciary be brought on board, and kept in close nexus with civil society for the provision of legal aid.

The presentation ended by proposing 8 activities to follow-up to initiate the implementation of the way forward as agreed to in the Joint Process and Action Plan in December if all present stakeholders would agree to these. The 8 activities included: a foundation meeting for a network; input to the formulation of a national legal aid policy; a baseline survey on legal aid and access to justice; working group meetings on training standards and qualifications; working group meetings on existing materials and standardisation hereof; development of common case and referral forms; development of a directory of legal aid service providers; and a pilot on best practices at provincial level for cooperation and coordination.

Concerns raised

Delegates raised a lot of concern regards the training of paralegals, which they observed was insufficient to equip the latter with the experience needed for competent provision of legal services. An instance was cited illustrating that some paralegals are only trained for a period ranging from 3 days to 1 week. To suppress this mischief, it was suggested that 'trainer of trainers' courses be

developed. After training these paralegal within the standards required, they should subsequently be allowed to become associate members of LAZ.

2. THE EFFECTIVE APPLICATION OF THE COMMITMENT OF MEMBERS OF THE LAW ASSOCIATION OF ZAMBIA TOWARDS PROBONO WORK.

The convenor of the Legal Aid Committee of LAZ informed the participants that LAZ is committed to providing pro bono work to the indigents. This commitment by members of the association was said to be expressed both individually and collectively; through the LAZ Council and the Annual General Meeting of LAZ. He stated that LAZ primarily achieves this objective through its Committees. Two committees were singled out as a forum through which provision of legal aid is effected: *The Women's Rights Committee* and the *Legal Aid Committee*.

Mr Kalaluka noted that the Women's Rights Committee established the **National legal Aid Clinic for Women**, which provides pro bono services to women and children from marginalized social sectors. The Clinic, established in 1990, has offices in Lusaka, Ndola and Livingstone. It was essentially established to provide probono services to women in the quest of advancing their acquisition of justice. It has about 12 practising lawyers. Today, the legal aid clinic has extended its services to both women and men who cannot afford to access private legal practitioners.

The functions of the Legal Aid Committee under LAZ also include the identification of the marginalized in society who need legal presentation. The legal aid committee deals with at least 15 cases per month and such cases include: police brutality, dismissal from employment and human rights violations. Criminal matters demand that legal service providers come on board and render assistance regards the dispensation of justice.

The convenor informed the gathering that LAZ, at its Annual General Meeting last year, decided to come up with a deliberate policy where each and every practicing lawyer should not be given a practising certificate, unless he satisfies the requirement of handling a certain number of pro bono cases. He noted, however, that such a mechanism had not yet been finalised but a report will be made to the forthcoming LAZ AGM.

Challenges of the LAZ Legal Aid Committee.

It was observed that there is lack of facilities (such as lack of transport and financial resources) to assist legal practitioners in the delivery of legal services; outside major cities such as Lusaka and Copperbelt. Most of the accused persons are denied bail owing to lack of lawyers in some provinces to make the necessary legal representation. Suffice to mention, the major constraint crippling the committees' efforts hinges on financial resources. Without adequate financial resources practitioners are unable to reach out to clients outside Lusaka and Copperbelt where there are few, if any, lawyers. Moreover, it was realised that there must be a mechanism for enabling practitioners meet out-of-pocket expenses.

It was brought to the attention of the delegates that, the LAZ Legal Aid Committee, in partnership with NORAD, handled about 300 cases last year. Under this project members of the Association were paid nominal out-of-pocket expenses of up to K400,000. The nature of the cases handled involved: attempted murder, aggravated robbery, theft cases and dangerous driving.

However, there was a concern raised by the participants regards the modus operandi in choosing persons to be accorded legal representation for their cases. In response to the concern, it was adumbrated that this can only be achieved by working with NGOs and the prisons services to identify the persons to be represented.

3. CHALLENGES AND OPPORTUNITIES FOR INCREASED COOPERATION AMONG CIVIL SOCIETY ORGANISATION FOR THE PURPOSES OF IMPROVING LEGAL AID SERVICES TO THE INDIGENTS IN SOCIETY.

This segment presented by Mr. Eugene Kabilika of Caritas Zambia basically captured some of the challenges identified during the earlier mentioned paralegal mapping exercise. Additionally, however, it brought to the fore some of the challenges that have engulfed the Paralegal Alliance Network. It also highlighted the opportunities available for increased operation among CSOs.

About 8 challenges were identified to that effect:

1. Absence of a legal framework for the provision of legal aid services. For instance, the conduct of paralegals is only guided by ethics as opposed to clearly defined and legally binding rules.
2. Geographical coverage of CSOs is restricted along the line of rail such as major towns and cities. For instance, there are very few CSOs involved in prison services, as well as NGOs offering services like mediation.
3. Training of paralegals lacks standardisation to adequately equip or inculcate core-values in them. In particular, paralegal training modules in force are too short to equip them with relevant skills in the provision of legal services.
4. The sponsoring of paralegals during the period of three years which they are required to do their training, in the event the diploma course is implemented.
5. Lack of monitoring and supervision of the paralegals by qualified lawyers. For example, Legal Resources Foundation is the only legal service provider, which offers adequate supervision of their paralegals.
6. There should be paralegal incentives with regards the provision of legal aid services.
7. Lack of strong linkages and networking among legal aid service providers.
8. Serious financial impediments in relation to legal aid service provision.

Opportunities

The speaker as a representative of PAN informed the participants that it had been decided within PAN to embrace the opportunity of improved coordination and cooperation among civil society legal aid service providers by opening up PAN to become the coordinating network for all LASPs. Of course the modalities of such a network would have to be

It was strongly opined that the initiative of developing a national policy document should be embraced. It should be seen as an opportunity for various stakeholders to have an input in the content of the policy.

It was echoed that although the decentralisation of the formal justice sector has not yet been implemented, the idea is a step in the right direction that can help to improve access to justice outside Lusaka and the Copperbelt.

It was intimated that the good will of cooperating partners like GTZ, DANIDA, SIDA, DIHR and others must be explored to establish an effective way of utilising their financial and technical aid. Also, the scaling up of the access to justice programme must be perceived as an opportunity that should not be missed, if collaboration and networking has to bear fruit. And this fruit is increased access to justice by all, especially the poor.

The speaker concluded by saying that access to justice entails that those that have been offended or victimised obtain redress via a non-violent structure that respects the dignity of not only the offender, but also the offended. Ultimately the support of LAZ must equally be exploited to the full.

4. LINKAGES BETWEEN CIVIL SOCIETY LEGAL AID PROVIDERS AND STATUTORY AND GOVERNMENT LEGAL AID PROVIDERS.

Mr Wilfred Mwenya, informed the gathering that LAB is the only statutory board, created by virtue of the Legal Aid Act No. 19 of 2005 as a cooperate body capable of suing and being sued in its own name. Its mandate is to provide for the granting of legal aid in civil and criminal matters. This includes causes to persons whose means are inadequate to enable them engage a private legal practitioner.

Mr Mwenya added that there are certain implications that arise from the Act because LAB is an autonomous body; operating without the direct interference by the Ministry of Justice. For example, it is now easier for it to relate with non-statutory legal aid providers. He explained that the ability of any institution to provide legal aid largely depends on the availability of funds. In this respect, LAB is seriously handicapped. In truth, the current status is that LAB is dependent on the funds appropriated by Parliament; inclusive of the fees, contributions, costs, loans, grants or donations. LAB is accountable to parliament under section 13 and 14 of Ac No.19 of 2005.

Emphasis was placed on the need for linkages between LAB and civil service providers. It was averred that this could only be achieved through networking and collaboration. It was realised that there is need for standardising the Legal Aid Board and the civil society in the provision of the legal services. Mr Mwenya underscored the need to decentralise its services to all corners of the country. He further pointed out that to this end that LAB has already employed advocates who are awaiting deployment in the established headquarters in Solwezi, Mansa and Mongu. Advocates taking up these offices will be in charge of the whole province.

LAB is currently scouting for professional staff for the pilot projects that are to begin in other towns such as Chipata. The pilot project is in line with the

decentralisation program of the government to provide legal aid services to all parts of the country.

LAB justified the offering of legal representation to persons with cases before the Supreme and High Court -as opposed to those before the Subordinate Court - on the basis of limited capacity in terms of resources. In criminal matters, it is a deliberate policy by LAB to offer legal representation as opposed to civil matters where legal representation is a matter of discretion.

It was pointed out that due to the high number of persons in need of legal aid services, LAB was of the view that there was a requirement for the introduction of “small claim courts” for minor cases. This will help in the settlement and decongestion of civil cases that are still pending before the courts of law. In this vain, LAB considered that the experience of CSOs would be needed in this area since they are much closer to communities. There was a proposal for an alternative dispute resolution mechanism as a means of helping in this area as well. As had previously been identified diversion from the formal institutions through for example mediation should be explored and supported. CSOs may be better placed to handle such matters as they do not require litigation.

Mr Mwenya also informed the delegates that there was need for various players engaged in the provision of legal aid, be it government institutions or CSOs, to work together and coordinate their activities. It was also stressed that there is urgent need for government to put in place a legal aid policy to regulate the provision of legal aid services in the country. It was further observed that there is need to develop a curriculum program for the training of paralegals to standardise the provision of legal aid services among the providers. LAB has, through its statutory mandate, a greater challenge to roll out to all districts in the country and this will require the use of paralegals.

Under the Government Access to Justice Programme LAB has developed a work plan in association with the four other criminal justice sector institutions

(Judiciary, Prisons Services, the Director of Public Prosecution and the Zambia Police Service-Victim Support Unit). The role of the CSOs should be considered in relation to these work plans. Mr Mwenya re-emphasised the need to support the paralegals working at local and subordinate levels through CSOs and Legal Aid Board.

Mr Mwenya suggested that *the success of any linkage between the CSOs and statutory and government legal aid providers, in the provision of legal aid services, is dependant on the efforts of the aforementioned organisations in making headways towards achieving the desired goal.*

It was stated in conclusion that, for LAB, the provision of the Legal Aid Act CAP 34 (s.20A) is the starting point bringing all players in the field of legal aid provision under one umbrella and providing a forum for engaging them towards this common goal.

5. STANDARDISATION AND DEVELOPMENT OF PARALEGAL TRAINING COURSES

Sally Gill and Pamela Robotham presented an interactive paper where they emphasised the need *inter alia* for standardisation and development of paralegals training courses in the quest to increased access to justice in Zambia, qualifications, training models (law school model for training paralegals) and the possible job title.

The definition of a paralegal was discussed, and the need to determine what different types of paralegals working in different domains would need to learn and what they would need to operate. The participants were asked to consider in groups what was needed in terms of contracts, qualifications, training, resources and extras.

The NCDV Model and the Law School Model for training of paralegals in the UK were described and what could be applicable from these models in a Zambian

context considered. Furthermore, various factors for developing proper operating standards for paralegals were considered.

The presenters underscored the need to encourage students at university level (University of Zambia), and equip them with the necessary skills and experience. They stated that this would enable the students to become effective legal aid service providers.

The presenters concluded with proposed next steps for the strengthening of legal aid service provision through paralegals in Zambia, which included more analysis on gaps and quality in delivery of services; development of basic centrally accessible electronic file management system; development of standard forms; development of paralegal handbook; centralised website. Moreover input to content of the paralegal handbook was given.

6. FUNDRAISING STRATEGIES

The participants were in unanimous agreement that there was need to develop an effective fundraising mechanism. To this effect, The President for South London Law Society, Mr Andrew Unger proposed various modes of fundraising. In particular, he suggested that one way of doing this is by linking donors (including private donors, both individuals and companies, e.g. law firms) directly to the activity or individual they are supporting. This could be direct contribution to the establishment of a legal advice centre, or paying the cost of one legal aid advisor in a specific district for one year, etc. This could be done by getting photographs of the established legal advice centres to show that there are real programs being undertaken that need some funding. If convinced, the donors will be more willing to release the funding towards these programs as the direct benefits are obvious.

The other strategy proposed was the settling of priority areas on the basket funds. It was agreed that LAB should maintain a basket fund for the network,

which will be monitored by the Board, and it should be separate from the monies appropriated by parliament.

Mr Unger also deliberated on the need for established interlinks with regards pro bono services in London and Zambia. He categorically stated that it would be more prudent to establish a system of marketing of legal services in Zambia as the situation is in London. He also mentioned that there should be revision of the legal fees so that even the most vulnerable persons in society would be able to access the services of private practitioner if this was possible.

7. RESOLUTIONS

a) Structure for co-ordination

The delegates agreed in principle that PAN should be enlarged to incorporate all the civil society organisations providing legal aid services. In addition, there must be meaningful and effective coordination between LAZ, PAN and other legal aid services providers.

(b) The delegates adopted the proposed 8 activities for 2008 in the concept paper referred to in Mr Mweemba's presentation:

- A constitutive meeting of legal aid service network
- Baseline study on the provision of legal aid in Zambia taking into account the needs of the vulnerable and marginalized groups and analyse the conditions prevailing in rural areas. Further, it will look at existing and potential mechanisms for support, quality assurance and monitoring of legal aid services.

- Strategic planning workshop for CSOs, legal aid service providers following the conclusion of the baseline study and to set the direction of an expanded network for the next 2-3years.
- Compilation and distribution of the Directory for legal aid service providers and their roles and mandates including areas of operation.
- Inputs of CSOS legal aid providers and other stakeholders towards the national legal aid policy.
- Analysis of the existing reference manuals- compilation of the existing materials and identification of gaps.
- Analysis of the training curricula, standards and material- as identified in the workshop held last year based on the principle of the concentric circle.
- Development of best practice framework for pilot cooperation at provincial level-the choice of one province as a pilot project site to implement an agreed best practice model for cooperation among CSOS legal, aid providers and their linkages to state structures.

(c) It was also agreed that the judiciary should be included as part of the individual stakeholders. The rationale or conceptual underpinning was that justice is meted out in the courts and we can only speak of real access to justice when they are part of the exercise.

(d) Establishment of legal advice centres and networks for each region for easy coordination. It was agreed to look into the possibility of reviving the Legal Aid Committees as established on paper in the Legal Aid Act for this purpose.

(e) There must be proper managing and directing of legal aid basket funds, to which government and donors are contributors. Furthermore, the fund should sit with the Legal Aid Board but it should be separate from the funds established under The Legal Aid Act.

The delegates were of the view that a time limit be set for a next meeting on the enlargement of PAN and the proposed 8 activities, since many organisations

expressed concern that if too much time is taken the programmes might lag behind. It was therefore decided that LAZ should host a meeting within one month to decide on the modality of how PAN should be enlarged and agreement of activities for this year and beyond. All present organisations agreed to return to their respective organisations to consolidate support for an expanded network, the proposed 8 activities and the modalities for this prior to the next meeting to be called by LAZ.

Some organisations, however, expressed concern that the existing members of PAN be given an opportunity to consult each other and possibly review their memorandum of understanding to accommodate the new members.

LAW ASSOCIATION OF ZAMBIA

**A PRIMER OF THE REPORT OF THE
ACCESS TO JUSTICE – BAR – BENCH
CONFERENCE**

**RAPPORTEURS: KELVIN MUZENGA
BENSON MPALO**

THURSDAY, 20TH MARCH, 2008

**PROTEA HOTEL
CHISAMBA**

INTRODUCTION

The theme of the Conference was “Access to Justice”.

This conference was a first of its kind. The Bar/Bench Conference was preceded by a stakeholder’s conference on the same topic which ended the previous day, on 19th March, 2008. This conference brought together representatives of various organizations providing legal aid services in Zambia. The Bar/Bench Conference was a follow up to this earlier conference and its focus was on the relationship between the bar and the bench and their role in ensuring Access to Justice.

The Conference deliberated on the following topics.

- i. The concept of Access to Justice
 - a) Criminal procedure and Civil Rights
 - b) Multi combinations of impediments
- ii. Impediments to Access to Justice
 - a) The effect of Adjournments or delays in delivery of judgments in the quest for access to Justice.
 - b) Adjournments or delays in delivery of Judgments – views from the bench.
 - c) Small claims Court an Alternative Dispute Resolution and Access to Justice.
- iii. Impediments to Access to Justice. Length and contents of written submissions
- iv. Preparation of Civil Appeals Records
- v. Etiquette and Conduct at the Bar and Bench
- vi. The Relationship between the Judiciary and the Legal Profession in the UK and its on Access to Justice.

The following is a summary of the Presentations by various speakers and observation, comments and questions and resolutions presented by the participants in the plenary sessions.

OPENING REMARKS WERE MADE BY:

Mr. Elijah C. Banda, S.C. President of the Law Association of Zambia, Mr. Andy Unger, President of the South London Law Society. His Excellency the British High Commissioner and His Lordship the Chief Justice of the Republic of Zambia.

MORNING SESSION

The session was chaired by Mr. Micheal Musonda.

The session was attended by all participants. Member of the press were excluded.

1.0 The Concept of Access to Justice.

The discussion was led by Dr. Julius B. Sakala S.C.

a) Concept.

The discussion provided a variety of definitions Access to Justice: - Adopted Lord Denning's Phraseology "The Road to Justice" The discussants urged that access to Justice in both civil and Criminal matters is an essential ingredient to the enjoyment or enforcement of human rights.

Various instruments at international, regional and national level contain provisions guaranteeing access to justice.

b) Multi Combinations of Impediments.

The discussion highlighted various impediments to access to Justice. Legal impediments include, constitutional derogations, especially during state of emergency.

Other legal constraints are contained in;

- ❖ The preservation of Public Security Act,
- ❖ The State Security Act
- ❖ The Immigration and Deportation Act

Other impediments are due to;

- ❖ Economic and Social disparities
- ❖ Ignorance or Illiteracy

- ❖ Technical or Cumbersome procedures in both Civil and Criminal matters.
- ❖ Cost of Litigation.
- ❖ Delays in Service delivery in our judicial system.

Dr. Sakala urged participants to discuss the theme of Access to Justice without pointing fingers. He noted that reasonable and efficient access to justice involves many stake holders; the police, the plaintiffs, Defendants, public Prosecutors, State Advocates, Members of the Legal Profession, Court Clerks, Interpreters and even Record Clerks.

FIRST PLENARY SESSION

It was stressed that the theme Access to Justice should not merely remain a slogan. The theme must be translated into workable solutions. There is need for example, to invest in the “Road to Justice”. A suggestion was made that our courts should be called “Courts of Justice” instead of Courts of Laws”.

A comment was made by one of the participants that the rules of procedure in our courts should be made flexible. Professor Patrick Mvunga urged that a rare gathering of this sort must come up with solutions to the problems of Access to Justice.

2.0 Impediments to Access to Justice:-

The discussion was led by Mr. William Nyirenda S.C.

The focus was on the Effects of Adjournments or delays in Delivery of judgments in the quest for Access to Justice.

It was recognised that adjournments, as well as delayed judgments tend to delay the administration of the Justice system.

In our jurisdiction there is no mechanism to ascertain incidents of adjournment and delayed judgments.

2.1 The causes of Adjournment and Delayed Judgments.

- ❖ Lack of preparedness to proceed
- ❖ Incapacity to proceed due to physical limitations
- ❖ Poor management of diaries and time
- ❖ Superior summons.

Litigants are either:-

- a) Plunged in economic or financial stagnation;
- b) Tempted to resort to self help mechanism in the hope of frog jumping the system.

2.2 Possible Remedies Highlighted.

Lack of preparedness to proceed maybe cured by:-

- ❖ Commitment on the Court and advocates to spend time researching in the Law and ready to proceed.
- ❖ The Courts may require the engagements of research assistants qualified in the law to help in early delivery of Justice.
- ❖ The practice of written submissions ought to be revisited. It creates a gap in the time which can be removed by requiring Advocates to submit viva voce at the close of trial.

Nothing much can be done to incapacity owing to physical limitations except to call for genuineness in such excuses.

Poor management of diaries and time is curable.

2.3. Statutory and Judicial Accommodation to Delay:-

- ❖ Recognised that rules of the Court accommodate adjournments and delays. Order 33, Rule 1 High Court Rules is a case in print.
- ❖ Judicial decisions have also tended to accommodate adjournment and delays.

See: Godfrey Miyanda vs Mathew Chaila (Judge of the High Court) (1985) ZR 193.

“.....although the saying is that justice delayed is Justice denied, it must be borne in mind that rush justice can also be justice denied”. (Dicta of Sakala J, as he then was).

2.5 Effects of Delays

The effects of delays in the delivery of Justice maybe summed up as follows:-

- ❖ It erodes the public's confidence in the Justice system.
- ❖ It compromises the legitimacy and integrity of the system and,
- ❖ It effectively denies the society access to Justice.

2.6 Several specific effects maybe outlined:-

- ❖ The justice system is held in disdain.
- ❖ Anxiety, pain and emotional stress are inflicted upon the litigants who hang in suspense.

2.7 Lack of preparedness has to do with the following:

- ❖ Lack of preparedness by advocates.
- ❖ Failure by the Court to make up its mind because of inadequate information, especially the law.
- ❖ Excessive leniency by the Courts in allowing adjournments.
- ❖ Delays by Advocates in filing the require process.

2.8 Incapacity is caused by the following:-

- ❖ Illness and bereavements
- ❖ Absence with leave to attend to Seminars and rest or relaxation.
- ❖ Excessive leniency by the Courts in allowing adjournments.

2.9 Poor Management of diaries and time relating to both bench and the bar is characterized by the following:-

- ❖ The Court listing more than one trial in one morning or afternoon preceded by numerous chamber matters.
- ❖ Advocates having more than one commitment to be heard in different Courts – Concomitantly – such different commitments even being in different towns sometimes.
- ❖ The procedure in the Commercial court and rules therefore have tended to expedite the process somewhat.
- ❖ It is suggested that Courts take control of the process in the Civil matters to avoid prolonged exchanges of pleadings, discovery e.t.c.

3.0 Adjournment or delays in delivery of judgments – views from the Bench: Discussion led by his Lordship - The Honourable Chief Justice – Ernest Sakala.

- ❖ An adjournment in a judicial proceeding is putting off or the postponing of a proceeding with the intention of resuming the proceeding later.
- ❖ The question is: how later should the proceedings resume?
- ❖ The Commonest complaint against the Bench is the cases in Court take long to dispose off and that judgments are not delivered in good time.
- ❖ Case records reveal that most adjournments are at the instance of the prosecution or defence or the lawyers.

- ❖ Some of the adjournments are in the interest of justice, while other are simply time buying. But adjournments of cases are generally a necessary and an integral part of the process of law and the efficient administration of Justice.
- ❖ There is no fast and hard rule about adjournments in judicial proceedings.
- ❖ Guidelines for adjournment of criminal cases and civil matters are set out on the criminal procedure code, Cap 88 of the Laws of Zambia and the High Court Rules respectively.
- ❖ Adjournments are lawful; but must be made at the discretion of the Court,
 - See Section 202 of the CPC
 - See also Section 281 (1) CPC
- ❖ The discretion of the judge to grant or not to grant an adjournment is influenced by and depends on various players and stakeholders; The judge is the key and major player.
- ❖ Adjournments maybe inevitable in the following situations.
 1. If an accused is not brought to Court.
 2. If witnesses are not brought to Court and;
 3. If Advocates do not attend court, the trial cannot proceed.

The above factors lead to adjournments that in turn result in delays in disposing off cases expeditiously.

- ❖ Some advocates specialize in delaying cases in Courts through applying for adjournments. Single Lawyer Firms are generally culprits in seeking adjournments at short notice.
- ❖ There is a rapid increase in the number of both criminal and civil cases being filed in courts everyday. The workload is now outstripping the available courtroom space. And when courtrooms are not available, adjournments are inevitable. Courtroom space is now becoming a critical issue
- ❖ Manpower is also currently overstretched.
- ❖ The Chief Justice informed participants that the Judiciary is doing its part by implementing certain measures aimed at addressing the delays in delivery of judgments. The Law Association of Zambia needs to play its role.

4.0 Small claims Courts an Alternative Dispute Resolution and Access to Justice.

The discussion was led by the Honourable Mr. Justice C. Kajimanga.

SECOND PLENARY SESSION

Mr. B. Mutale S.C. noted that delays in the delivery of judgments can be effectively controlled by judges. It was also observed that one of the major factors is that the Chief Justice and Judges in Charge have no Constitutional powers to deal with erring judges.

A concern was raised by one of the participants on the increased number of reserved judgments and rulings in the Supreme Court.

Views were also expressed on the need to have specialization at the bench. It was also observed that submissions in this regard were made to the Mung'omba's Constitutional Review Commission.

The participants also raised concerns in the quality of judgments delivered by some judges. It was felt that some judgments lack depth. It was suggested that there is need for the judiciary to engage Research Assistants if the quality of Judgments is to improve. Judgments should be well reasoned. In response the Chief Justice told participants that a lot is required to write a judgment. One must be in the right state of mind but stated that this is nonetheless not a defence to the quality of judgments. The set up of the Commercial Registry in the High Court was hailed as a step towards specialization among judges.

The Chief Justice also Cautioned participants against bringing unmeritorious cases before Court. The President of the South London Law Society told participants that the Courts have power to award wasted costs against Counsel who brings a case without merit before the Courts.

Participants were also concerned about the cost of litigation. Legal fees rendered by some advocates are a serious setback to Access to Justice. Another concern was raised on the lack of a scale of legal fees in criminal cases.

On the question of exorbitant legal fees, the plenary chair Mr. Michael Musonda reminded participants that an underpaid Lawyer is not only a danger to his client but also to himself.

It was also observed that the fact that judges have to take notes of proceedings in his own handwriting contributes to delayed justice delivery. There is therefore need to enhance technology in our Courts.

Participants also raised the issue of missing Court record and urged that solutions must be found.

It was also noted by a participant and High Court Judge Mr. Justice Lisimba that Lawyers in Zambia rarely take advantage of mediation as an alternative to litigation. He urged Lawyers to take advantage of this process.

On small claims courts, Judge Kajimanga told participants that these Courts are aimed at assisting indigents get legal assistance without following complex procedures and this is why some matters are excluded from the jurisdiction of the Court. A concern was however raised in the monetary jurisdiction of the small claims Court and a suggestion was made to increase it to up to Twenty million Kwacha

AFTERNOON SESSION

SESSION CHAIR: Judge Chirwa (Supreme Court Judge)

The afternoon session was preceded by a speech from the Attorney General, Mr. Mumba Malila, SC . He noted that the issues raised in the morning session were very pertinent. He appealed to participants to make recommendations and promised that, through the Minister of Justice, he will ensure that necessary amendments are made to the law to remedy impediments to access to Justice are effected.

Following Mr. Malila's speech, presentations were made by various speakers.

The Honourable Mr. Justice Peter Chitengi led a discussion on Preparation of Civil Appeal Records.

The Honourable Mr. Justice E, Chulu also led a discussion on Etiquette and conduct at the Bar.

Mr. Andy Unger, President of the South London Law Society also led a discussion on The Relationship between the Judiciary and the legal Profession in the UK and its Impact on Access to Justice.

THIRD PLENARY SESSION

The Chief Justice informed participants that the budget provision in the Judiciary has been a serious setback on the dispensation of Justice. Independence of the Judiciary should also mean financial independence, but this is not happening. An appeal was made to the Attorney General to help in this regard.

During the third plenary session, a question was raised by Mr. S. Lungu Vice President of the Law Association of Zambia whether; it is possible to dispense with the wearing of gown in Court. Professor Mvunga responded by saying that gowns play a symbolic role. They help to distinguish Counsel from other persons in Court.

It was suggested during the third plenary session that there is need for formal statistics on the number of adjournments in Courts. We create a database to ascertain at whose instance adjournment are caused.

The participants also expressed concern at the cases in the subordinate Courts. It was the View of the most participants that Magistrates are usually not punctual. They sit as late as 11:00 hours and lawyers and their client are forced to wait in wrong places.

It was also observed that the relationship between Lawyer – lawyer is deteriorating. Participants were urged to enhance the lawyer – lawyer relationship.

RESOLUTIONS

At the end of the Conference, the following resolutions were adopted:-

1. To create a working committee between the Bar and Bench to co-ordinate the resolutions of this Bar/Bench conference.
2. To simplify the procedures in the justice system to enable people to have reasonable access to justice.
3. To train registry staff of the courts, professional staff to man registries and support the bench.
4. To introduce the use of modern technology in the justice system.
5. To mitigate the escalating costs of litigation and need to enhance the legal aid and the provision of legal representation on pro bono basis.
6. To improve the administration of mediation process.
7. To create a mechanism that will encourage legal practitioners to seek amicable resolutions of disputes before and during litigation.
8. To adopt practice directions and policies that will guide Bar and Bench in the best and most reasonably accepted standards of practice in relation to adjournments, dress code, delays in delivery of judgments, quality of documents and etiquette.
9. To uphold the establishment of a small claims court as a means to enhance access to justice particularly for indigent litigants and the monetary jurisdiction limit to be determined by the Chief Justice from time to time.
10. To strongly urge the Government to enhance the financial autonomy of the Judiciary by providing adequate funds.

This generally marked the end of the Bar/Bench Conference.