



NATIONAL ASSEMBLY 7TH PARLIAMENT

**PARLIAMENTARY STANDING COMMITTEE ON
CONSTITUTIONAL AND LEGAL AFFAIRS**

**REPORT OF THE BENCHMARK STUDY/VISIT ON THE
EFFECTIVENESS OF TRADITIONAL/COMMUNITY COURTS IN
ZAMBIA**

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1. INTRODUCTION/ BACKGROUND

The Parliamentary Standing Committee on Constitutional and Legal Affairs conducted a benchmarking visit to the Parliament of Zambia and various government offices from 13 to 18 November 2022.

The Standing Committee on Constitutional and Legal Affairs has the constitutional mandate and responsibility to conduct parliamentary oversight on government ministries and agencies responsible for access to justice, traditional authorities (community courts), protection of human rights, elections and combating of corruption.

The Parliament of Namibia passed the Community Courts Act, Act No 10 of 2003. The Act provides for the recognition and establishment of community courts; to provide for the appointment of Justices and for clerks and messengers of court; to provide for the application of customary law by community courts; to provide for the jurisdiction of and procedure to be adopted by community courts; to provide for appeals from community courts to other courts; and to provide for connected and incidental matters.

The objective of the benchmarking and peer-to-peer exchange visit was to allow Members of the Standing Committee and its Secretariat to learn how Zambia deals with Community Courts.

2. OBJECTIVE OF VISITING ZAMBIA

The standing committee identified Zambia as a country with an effective traditional court system and would want to benchmark and learn from the achievements of the country during a one-week study visit to the Zambian Parliament.

The objective of the study visit is to afford the members of the standing committee and its secretariat the opportunity to learn how Zambia has developed and implemented the traditional court system.

Specifically, the Committee would like to learn and share experience on the following:

1. The effectiveness and efficiency of the justice system in Zambia
2. Parliamentary supervision/oversight of the justice system mainly to ensure that the justice system is accessible to the people and mindful of the doctrine of separation of powers; and non-interference in the functions and duties of the courts and judicial officers;
3. The origin and effectiveness of traditional courts in Zambia
4. The role of traditional courts in the administration of justice, reduction of the workload in the magistrate's courts and reduction of crime in general
5. The setup of traditional courts in various traditional authorities e.g. resources, justices, clerks, messengers and staff, infrastructure and equipment etcetera?
6. Education, awareness and information sharing to community members regarding traditional courts. Are community members regularly educated about the role and function of community courts?
7. Allowances paid to traditional court officials. Does it commensurate with their responsibilities?
8. How does the traditional courts, if any, impact on the power and authority of traditional leaders or chiefs?
9. How effective is the enforcement of orders of traditional courts and payment of fines?
10. Possible opportunities for mutual benefit of the two parliaments and countries.

3. DELEGATION

The delegation comprised of: Hon Kletus Karondo, Chairperson, Hon. Paula Kooper, Deputy Chairperson, Hon. Vincent Mareka and Hon. Diederik Vries, they were accompanied by Mr. Willem Isaak, Deputy Director and Mr Ivan Skrywer, Parliamentary Clerk.

4. METHODOLGY AND MEETING CONDUCTED

The delegation held meetings with the following office bearers, offices, ministries and organisations:

- Chairperson of the Zambian Parliamentary Committee on Legal Affairs
- Courtesy call on Honourable Madam Speaker
- Interaction with Chief Registrar of the Judiciary
- Interaction with Permanent Secretary: Ministry of Justice
- Visit to a Local Court

4.1 Courtesy call on the Speaker of Zambia

The delegation paid a courtesy to the Speaker of the Parliament of Zambia who welcomed them and said that the Namibia and Zambia relationship is very cordial. The Speaker expressed satisfaction with interaction between the staff of the two parliaments. The Speaker also impressed on the need to work together as a region and welcomed the benchmark visit.

4.2 Parliamentary Supervision

Parliament observes separation of power. However, if MPs feel that courts in specific area are not enough the registrar will be requested to conduct analysis before deciding on establishment of new courts. Parliament can call representatives of any institution to appear before any of its committees only when the needs arise. In Zambia Local Courts can now hear murder cases in the western region of the country.

4.3 Meeting with Parliamentary Committee on Legal Affairs

In Zambia the chairperson is from the opposition party or an independent candidate, it is also gender sensitive since the chairperson is a man the deputy is a woman. The supreme law which is the constitution creates the three organs of state which are the Executive, the Legislature and the Judiciary with distinct roles and very strict separation of power. Each one of the 3 arms checks the other. Any institution can't borrow money without Parliament approval. Legal Committee scrutinize bills, enactments, amendments and repeals. In Zambia parliament is the only institution allowed or mandated to make laws, appropriate funds and deal with scrutiny of public funds.

4.4 Unicameral system:

Zambia only has a one chamber parliament represented by 156 constituencies, 154 Members of Parliament and 8 presidential nominees. In Zambia the judiciary is the cornerstone, president can appoint but can't fire judges they can only be removed due to ill health, incompetence or gross misconduct. President can only be sworn in by a judge to become president of the country.

4.5 Judiciary in Zambia

Judiciary in Zambia is very effective and stringent as the requirements for a High Court Judge is an experience of 10 years. Experience for a Supreme Court Judge is 15 years. and the Chief Justice is appointed by President. In terms of the local court, they are not allowed to hear criminal cases when a case is open with the police, it can't be heard at local courts.

4.6 Traditional Courts/ Lower Courts Officials

Before 1966, there were no written laws. The Traditional Courts or the Kuta System included the Traditional and Customary system including appeal processes.

The lowest courts according to the Local Courts Act Chapter? They administer customary law and provides resolutions based on a particular custom. These courts resolve most of the disputes. Lower courts are most frequently visited by the poorest of the poor in Zambia.

Every village had an Induna. Courts referred to as the Court of Substantial justice, not so serious and minor cases disputes were dealt with by theses courts i.e. stealing of chicken and this help to keep peace in the country. Most disputes were resolved by these courts. Headmen in villages were dealing with distribution of inheritance and land disputes.

Chiefs in Zambia are paid a subsidy, housing and transport. Customs are unwritten laws, customs help to keep law and order. People in Zambia prefer traditional courts over the normal courts as relationships between people become sour if they lose in normal courts.

The traditional courts system is a very effective courts system. It has contributed to the reduction of cases on the court roll.

Traditional courts officials are employed by government and are on the payroll of public service.

Chiefs receives allowances subsidy, chiefs are allowed to employ 2 messengers, while the headman are not paid by government but are compensated from the goats and cattle paid by transgressors.

4.7 Meeting with the Judiciary

4.7.1 Chief Registrar: Court operations

The judiciary consist of the Supreme courts and Court of appeal whereas the Local Courts are not part of the judiciary but the staff serving local courts are qualified judicial officials who are on the payroll of government.

Zambia has a dual judiciary system i.e. the common law courts and the Local Courts. Local Court cases are customary by nature.

4.7.2 Meeting with Deputy Chief Justice of Zambia; Lord Justice Micheal Musonda

The Committee on Constitutional and Legal affairs met with the Deputy Chief Justice who expressed appreciation of the special bond that the two countries share. He encouraged the delegation that our two countries should continue to learn from each other how to best serve its citizens. He went on to say that Zambia has a hierarchical court system; the Local Courts who administer the customary or the traditional courts are the most important court system because the local courts serve many and the majority of the people. He further said that they are busy with a study on the impact of adjudicators in local authorities. Throughout the country, local courts are available as there they are served by magistrates with suitable qualifications.

4.8 Local Courts in Zambia

4.8.1 Background

Local Courts in Zambia are the successors of the native courts which the British set up in the former Northern Rhodesia (Zambia) to administer customary law. They are established under Article 120 of the Constitution Chapter 1 of the Laws of Zambia and are recognized and constituted under Section 4(1) of the Local Courts Act Chapter 29 of the Laws of Zambia. They are currently referred to as courts of no record. However, the Constitution under Article 120(2) envisages that Local Courts shall

progressively become courts of record. Local courts are part of the Judiciary structure in accordance with Article 120 of the Zambian Constitution as well as the Local Courts Act Chapter 29 of the Laws of Zambia which provides for their recognition and establishment. They are graded either A or B thereby exhibiting a distinction in the extent of their jurisdiction and structural composition. Their geographical spread across the country exhibits their existence in all districts of the ten (10) provinces in Zambia, thereby making them more accessible to the majority of Zambians in various communities.

The law that governs the administration of justice in the local courts is African customary law as well as specific written law in accordance with Section 13 of the Local Courts Act which gives rise to the "Local Courts (Jurisdiction) Order." In this regard, Local courts can handle civil and minor criminal cases in accordance with the law. Civil cases include simple contracts, actions over money owed, reconciliation and divorce in customary marriages, compensation for damage caused to someone's property, injuries etc. With regards to criminal cases, local courts are only able to handle contempt proceedings currently, due to inadequate capacity. It is clear that local courts shall progressively graduate to hearing other minor criminal cases in accordance with the law. Once attained, this will help decongest the Subordinate Court.

Currently, there are 530 local courts in the Republic of Zambia. These courts are mostly preferred by the majority of litigants for the reason that the fees are reasonable and procedures are user-friendly. This entails that there are no complicated procedures regarding the application of the Law of evidence and complexities of procedural laws.

Local courts are presided over by Local Court Magistrates who are appointed by the Judicial Service Commission, the appointing authority for the Judiciary. Interviews are conducted in various provinces and recommendations are subsequently forwarded to the Commission for consideration and substantive appointment of applicant who meet the requisite qualifications. Applicants are required to be familiar with the language and customary practices in a particular area, since proceedings in local courts are held in local languages.

4.8.2 The hierarchy of Courts in Zambia

The Judiciary of Zambia is an independent arm of Government which constitutes the Supreme Court and the Constitutional Court which rank equivalent, the Court of Appeal, the High Court, the Subordinate Court, the Small Claims Court and the Local Courts which are right at the base of the Judiciary court structure. Appeals from the local courts are channeled to the Subordinate court.

4.8.3 The Role of the Local Courts

Local courts have mainly been considered to exclusively administer customary laws and pass judgments premised upon the interpretation of the customary laws. According to the law, Local Courts are meant to administer customary law and specified written laws in accordance with Section 12 and 13 as read with rule 2 of the Local Courts Act. They administer African Customary Law applicable to any matter before it in so far as such law is not repugnant to natural justice or morality or incompatible with the provisions of any written law. It can be noted that, the Local Courts Act carries a provision which regulates customary laws especially retrogressive customs which are inclined to potential injustices.

Local courts are also meant to administer by-laws and regulations made under the Local Government Act, which is in force in the area of jurisdiction of such local court. They are also meant to administer and adjudicate minor criminal cases, a list of which is prescribed under Section 13 of the rules of the court. The African customary law applicable in the local courts is regulated by the repugnancy clause. This helps to promote and accommodate new laws which also appear to amend the values of the old customary laws based on retrogressive customs.

Most of the litigants opt to have their matters determined by the Local Courts if such cases are among those falling under their Jurisdiction. The fact that lawyers have no audience in civil cases or customary law cases is delightful to many poor and uneducated persons who try to avoid facing lawyers in court, who may confuse them with their style of cross-examination. Most cases in these courts are quickly dealt with and disposed of due the simple procedures applied therein. Another advantage borders on the use of languages in court, without the use of an interpreter.

Local courts operate at grassroots and community level and deal with civil cases mainly minor cases as well as criminal cases i.e. stealing of chicken, insults or fights, marriage reconciliation, divorce as well as debt.

Decisions are arrived at by the bench after hearing the cases right there and then. Local Courts consist of Grade A Courts and grade B courts.

According to the official at Local Courts they could handle approximately 15 cases daily and a minimum of 250 cases monthly. Registration of cases are lodged with the clerk of the court at Local Court. The clerk interviews the complainant and determine the validity of the complaint. Court to deliver to the defendant, sometimes summons are not dully served for

cases to be heard. Divorce cases can be dissolved only when the couple are married in customary manner.

Linkages between Local Courts and formal courts; Assessors are called to help as long as such a person has background of the culture in the specific community the court operates. If a defendant is found to be guilty and are fined a specific amount of money and refuse to pay it becomes a police case.

4.8.4 Security at Local Courts

Local Court officials mostly rely on the messenger of the court who used handcuffs if defendants become disobedient. If there are high profile or sensitive cases on the roll to the court, the officials inform the police to attend such hearings.

4.8.5 Structure of Local Court, Grade A:

Position	Number of positions
Senior Magistrate	1
Clerk of Court	1
Registrar/Summons	1
Messenger	1
Cleaner	1

4.8.6 Local Courts and Traditional Courts

Both the Local Courts and the traditional courts administer African Customary Law. There is no operational relationship between the two court systems as none of them offers supervision to the other. In most places, both the traditional court and local court are located within the same areas and community members will

have to decide whether they would like their matter to be determined within the mainstream justice system or alternatively, by the traditional courts which are manned by traditional leaders.

It must be noted that, local courts are part of the Judiciary and that they are managed by Local Court Magistrates and other support staff who are placed on the Government payroll. On the other hand, traditional courts are managed by Traditional Leaders whose general duties are inclined to the executive wing of the government. The two operate independently and in line with the principles of Judicial independence and separation of powers. However, there are notable conflicts between local courts and the traditional courts, relating to jurisdictional misunderstandings. In certain areas, this has been resolved through periodic engagements with traditional leaders in various communities.

In some instances, traditional leaders claim to be more proficient in traditional matters especially that they are the custodians of various traditions. This happens where the traditional leaders are not alive to the fact that the law does provide for the use of Assessors in the local courts. These assessors are identified among the traditional leaders themselves.

Conflicts also arise where local courts determine cases of land disputes, especially if the Judgment is not in line with the wishes of the chieftdom. Members of the various communities do however have the right to choose where they would like their matters determined. When a matter is determined by the local court and one of the parties is dissatisfied with the decision of the court, they are free to exercise their constitutional right to appeal.

5. ADDITIONAL FINDINGS AND OBSERVATIONS

5.1 History and background of customary law and customary courts

In Zambia before 1966, there were no written laws. Traditional Courts or the Kuta system included the Traditional and Customary system including appeal processes. Local Courts in Zambia are the successors of the native courts which the British set up in Northern Rhodesia (Zambia) to administer customary law.

Zambia has a plural legal system consisting of general law based on English law, customary law, and a variety of bodies of rules and practices generated by semi-autonomous social groups like the church. Customary law consists of the customary laws of each of Zambia's 73 ethnic groups. Since these laws have never been unified or codified in Zambia, the term 'customary law' does not refer to a single common system accepted in the whole country but to customary laws regulating the rights, liabilities and duties of the different ethnic groupings.

5.2 Enabling statutes

Local courts are established under Article 120 of the Constitution Chapter 1 of the Laws of Zambia and are recognized and constituted under Section 4(1) of the Local Courts Act Chapter 29 of the Laws of Zambia. They are currently referred to as courts of no record.

Local courts in Zambia are presided over by Local Court Magistrates who are appointed by the Judicial Service Commission, the appointing authority for the Judiciary.

5.3 Role of Customary Courts in the Administration of Justice

Customary law is informal and is geared to the needs of the people it serves. It is not written down and rarely requires reference to broad generalizations or abstractions or to carefully constructed analogies from the past. It is characterized mostly by its remarkable flexibility and pluralism. As indicated earlier, it differs from place to place and ethnic group to ethnic group, and even from time to time within a single area as leaders change. The customary justice system therefore does not emphasize rules for the delivery of justice, such as fairness, nor does it endeavor to emphasize the rule of law.

The courts of chiefs and headmen constitute the customary criminal justice system. These structures of dispute settlement predate the colonial period. Kakula studied traditional court structures among the Lozi living in the former Barotseland in Western Zambia and observed that in the colonial days the Barotse traditional judicial system had existed parallel to the formal judicial system.

The law that governs the administration of justice in the local courts is African customary law as well as specific written law in accordance with Section 13 of the Local Courts Act which gives rise to the "Local Courts (Jurisdiction) Order." In this regard, Local courts can handle civil and minor criminal cases in accordance with the law. Civil cases include simple contracts, actions over money owed, reconciliation and divorce in customary marriages, compensation for damage caused to someone's property, injuries etc. With regards to criminal cases, local courts are only able to handle contempt proceedings currently, due to inadequate capacity. It is clear that local courts shall progressively graduate to hearing other minor criminal cases in accordance with the law. Once attained, this will help decongest the Subordinate Court.

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5.4 Reduction in the workload of Magistrates Courts

The traditional courts system is a very effective courts system. It has contributed to the reduction on the court role.

5.5 Remuneration, allowances and benefits

Chiefs in Zambia are paid a subsidy, housing and transport. Customs are unwritten laws, customs help to keep law and order.

Traditional courts officials are employed by government and are on the payroll of public service.

Chiefs do receive allowances and subsidies, and allowed to employ two messengers, Headmen are not paid by government but are compensated from the goats and cattle paid by transgressors and the funds received from subjects.

6. CONCLUSION

In conclusion, Zambia has maintained both traditional courts and local courts by preserving their distinct features, powers and management. There is no operational relationship between the traditional courts and local courts and none of them offers supervision to the other. This position helps to effect the principle of judicial independence. Further that there is a clear separation of powers of the Government since there is no operational relationship between the traditional courts and local courts. Judicial powers drawn by local courts are clearly separated from the traditional courts whose administrative authority is inclined the executive wing of the Government.

The Committee on Constitutional and Legal Affairs Committee is satisfied with the benchmark visit it undertook to the Zambian Parliament. As indicative in the findings of the committee's report, Local Courts in Zambia are operating at the grassroots level and providing a service to the lowest segment of the society similar to Namibia the Namibian Community Courts.

In Namibia Traditional Courts are administered in different communal communities by traditional authorities or members who are also part of traditional authority and only receive allowance, whereas in Zambia Local Courts are run by

competently qualified magistrates and court personnel who are appointed by government.

In Zambia, the local court system has shown that local courts or community courts relieve formal courts from overloaded court role as well as helping to keep law and order within communities especially in the rural areas where general services lack.

7. RECOMMENDATIONS

The Committee recommends that the Ministry of Justice considers a similar system as that of Zambia for the community courts of Namibia.

A handwritten signature in dark ink, appearing to read 'K. Karondo', is written over a horizontal line.

HON. KLETUS KARONDO
CHAIRPERSON

