



## **RULE OF LAW ZAMBIA**

### **A Personal Summary & Observation Report:**

#### **Working with the Zambian Supreme Court**

*Compiled by:*

*Ms. Michelle Flynn,*

*Senior Judicial Researcher for the Irish Judiciary<sup>1</sup>*

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<sup>1</sup> I am presently employed as a Judicial Fellow for the Irish High Court. Should you wish to contact me with any queries in relation to the contents of this report, my email address is michelleflynn@courts.ie.



## **1. Aim of the project**

- 1.1 The aim of this project is to forge links between the Judicial Researchers of the judiciary of both countries, Ireland and Zambia, and to assist in developing a judicial research facility in the Superior Courts in Zambia. The ambit of the project was extended to include an analysis of the computerisation of certain administrative aspects within the Courts Service in Ireland such as the electronic payment of fines and fees. This analysis was undertaken with a view to the adoption and implementation of such information technology within the Zambian court system. Two additional key areas that were focused upon were an analysis of the Rules of the Superior Courts in Ireland and the function of the Commercial Court in Ireland; both were relevant as the Zambian legal system was undergoing changes to these areas contemporaneously with my visit.
- 1.2 The duration of my stay in Zambia was for less than three weeks and this alerted me to the fact that the purpose of the trip and the ambit of the project had to be clarified prior to my departure. Mr. Mathew Zulu, Special Assistant to the Chief Justice for Legal Affairs in Zambia, and I made contact via email in the weeks prior to my departure so as to ensure that any groundwork could be completed prior to the commencement of my visit, thereby optimising the potential for expeditious progress once I was in Lusaka.
- 1.3 I prepared various documents prior to my departure for Lusaka. The first outlined the work of Judicial Researchers in Ireland, the second dealt with the functioning of the Commercial Courts in Ireland and the final document dealt with the computerisation of the Irish courts' system.

## **2.1 The Supreme Court of Zambia**

- 2.1.1 I arrived in Lusaka on the morning of Tuesday, the 24<sup>th</sup> February. My trip was scheduled to last from the 24<sup>th</sup> February until Saturday, the 14<sup>th</sup> March. I commenced work at the Supreme Court of Zambia on Wednesday, the 25<sup>th</sup> February. I was introduced to various people



connected with the administration of the court system, the library staff and magistrates and began working closely with them to determine the nature of their work, the processes involved and the difficulties they encountered in particular in terms of efficiency.

2.1.2 I met with Chief Justice Sakala and Deputy Chief Justice Mumbilima who both expressed an eagerness to set up a Judicial Researchers' Office emulated on the model currently operating in Ireland. Another key concern which they voiced was their wish to improve library facilities for members of the Zambian judiciary.

2.1.3 I also met with the Information Technology Department and spoke to them about computerisation matters and various legal databases that could be considered.

## **2.2 Observations**

2.2.1 The establishment of a Judicial Researchers' Office in the Zambian Superior Courts would prove to be of immense value and ultimately an effective solution to the particular problems being experienced by members of the judiciary in Zambia. I believe that newly graduated legal academics and practitioners could provide the Zambian judiciary with legal research. Such graduates would also possess information technology skills and therefore could use electronic legal databases which the judges may not be familiar with. Tasks such as producing summaries of cases from the Superior Courts and circulating such summaries to all judges may engender discourse amongst the judiciary also. I prepared a document outlining the key functions of Judicial Research Assistants in Ireland and the running of the Judicial Researchers' Office. This document was aimed to provide guidelines for the establishment of a similar office for the courts in Zambia. I propose that a competitive recruitment process could be run amongst final year university law students and those with advocate training for the position as a Judicial Research Assistant. In this way, the successful candidates will bring beneficial research skills to the role whilst gaining valuable experience for their future careers within the Zambian legal system. It is particularly important to engage with the University of



Zambia and the professional advocate training bodies to offer modules on legal research methods. It is proposed that the establishment of such an office will fall under the remit of responsibility of the holder of the office of Special Assistant to the Chief Justice for Legal Affairs; currently this office holder is Mr. Mathew Zulu.

2.2.2 The Judges' Library in the Zambian Supreme Court has developed in an *ad hoc* manner. The books are quite dated and law reports often cease mid-series due to the lapse of a particular subscription. The books are catalogued on paper records only which proves to be quite inefficient and results in poor knowledge management in the event that such records are damaged. I strongly recommend that the library catalogue its collection electronically. This would involve training library staff in relation to information technology skills and knowledge management. I also recommend the introduction of the use of legal electronic databases for library staff and members of the judiciary. Such subscriptions would be a quick and cost-effective solution to the problems currently being experienced by the Zambian judiciary. Legal databases such as Hein Online and Lexis-nexis would prove to be of valuable assistance to the carrying out of certain judicial functions. In terms of acquiring legal text books, I believe that funding and/or donations of such could be organised for the Judges' Library.

2.2.3 Another facet which was discussed was the computerisation of the courts' system to ensure efficiency and that cases are dealt with in an expeditious manner. I believe that whilst this should certainly be a goal to which the Zambian courts' system works towards, it may be more pragmatic to prioritise other aspects of the overall project in the interim. For instance, funds could be allocated to the development of knowledge management amongst the judiciary coupled with an examination of developing legal academic discourse emanating from the University of Zambia in Lusaka whilst the computerisation of the courts' system remains a long-term aspirational goal.

### **3.1 Supreme Court on Circuit**



- 3.1.1 I travelled to Ndola, located in the Northern region of Zambia, with the Supreme Court when they went on circuit from the 2<sup>nd</sup> March until the 6<sup>th</sup> March, 2009. I was assigned to the Deputy Chief Justice for the duration of the trip. For the Supreme Court to go on circuit, it takes a great amount of logistical planning especially as the volume of cases which are to be dealt with is quite significant. The Supreme Court dealt with both civil and criminal cases whilst sitting in Ndola. I attended Court with the Deputy Chief Justice throughout the week to observe the cases and it gave me an incredible insight into the mechanics of the Zambian Supreme Court.
- 3.1.2 I also travelled to the surrounding subordinate courts and spoke to the Chief Magistrates and other Magistrates in an effort to gain insight into the obstacles they are facing.
- 3.1.3 I was fortunate to be able to organise a meeting with advocates in Ndola to discuss the legal aid system in Zambia

## **3.2 Observations**

- 3.2.1 The progress of many Supreme Court cases in Ndola was severely impeded. The main reason for such delays fundamentally rested on the fact that there was a lack of communication between the courts system and government/state bodies such as the Office of the President of the Republic of Zambia and the prison service. Therefore, the judges will often be prepared to hear cases and will have studied the files in advance of the case being listed only to be informed on the day, in court, that the case does not need to be dealt with for a particular reason. In many instances, this is due to the commutation of the accused's sentence.
- 3.2.2 Another issue which arose during my observation of the Supreme Court in Ndola related to the operation of the "Presidential pardon". I spoke with the Deputy Chief Justice in relation to its operation and the criteria and method for obtaining a Presidential pardon. It appears to occur without the courts being notified and this causes unnecessary work and delay for members of the judiciary and indeed the court's administrative staff.



- 3.2.3 In summary, the lack of communication between the courts' system and the prison service results in inefficient work practices and unnecessary and superfluous work for the judiciary of the Supreme Court and their administrative staff.
- 3.2.4 A matter which struck me as quite unusual concerned the use of precedent case law being more heavily relied upon in civil cases than in criminal cases. This was certainly surprising considering the rights at risk in a criminal trial. Indeed there appeared to be a lack of precedent case law and supporting legislation being argued in criminal appeal cases. Perhaps such standards could be subject to some scrutiny and indeed the variation between the standard in criminal law cases and civil law cases.
- 3.2.5 Another issue which I became aware of was the absence of stenographers in the court room. The hearings are not recorded and this results in the judges taking notes vigorously during the case.

#### **4. Commercial Court**

- 4.1 I met with Judge Chulu to discuss the operation of the Commercial Court in Ireland. Similar Commercial Courts have already been established in Zambia however, the courts are experiencing problems there in terms of efficiency and the criteria which has been set in order for cases to qualify for listing on the commercial list. As noted above, I had already prepared a document concerning the operation of the Commercial Court in Ireland and I also directed Judge Chulu to the Rules of Court for the Commercial List and the Practice Direction for the Commercial Court.

#### **5.1 Meeting with Christina T. Holder; Uriel and Caroline Bauer Human Rights Fellow**

- 5.1.1 I met with Ms. Holder who was a Ph.D. student from the Benjamin N. Cardozo School of Law in New York. Christina was carrying out research for her Ph.D. with the University of Lusaka. I met with her for an informal discussion and to see whether she could provide me with any observations



from her stay in Lusaka as she had been living there for up to eighteen months at that point. She informed me of a scheme that she was taking part in which operated between various universities in the United States called "Books for Africa". Through this scheme, books are donated from various academic institutions in the United States of America and universities and schools throughout Africa are the recipients.

## **5.2 Proposal**

5.2.1 I propose that such a scheme is established amongst Irish academic institutions and relevant State bodies with the mandate of collecting and distributing such books to Zambian academic institutions and for the Zambian judiciary. Perhaps such a scheme could be organised and run by the Rule of Law Committee with a view to facilitating the distribution of current legal academic textbooks to recipients in Zambia but also considering the extension of such a project to other African countries where the Rule of Law project is operational. The caveat which must be highlighted in relation to the "Books for Africa" scheme, or indeed any analogous project which the Rule of Law Committee may establish, is to ensure that the books collected are up to date and relevant for the purposes of the recipients.

## **6.1 Meeting with the Zambian Rules of Court Committee**

6.1.1 I was invited to meet with the Rules Committee concerning certain procedural rules in operation in relation to the Superior Courts in Zambia.

## **6.2 Observations**

6.2.1 Upon studying their Rules of Court and discussing various issues with the Committee, my key concern was that the Rules of Court must be compatible with the Constitution of the Republic of Zambia.

6.2.2 I also suggested that the determination of court fees should be arrived at by a process akin to index linking and it should not be just a figure arbitrarily arrived at.



- 6.2.3 Another suggestion that I proposed was the forming of informal lists amongst the judiciary of the High Court as this would engender the development of expertise in particular niche areas of law such as personal injuries and family law matters. This would also serve to expedite the progress of cases within each list. I noted that if such a process was adopted, the Committee should ensure that judges alternate between lists at certain intervals so as to ensure equal competence in all areas of law.
- 6.2.4 Lastly, I suggested that the Rules of Court, and all amendments, should be available electronically on the official courts website; [www.judiciary.gov.zm/](http://www.judiciary.gov.zm/). This would ensure that advocates would have access to such Rules of Court.

## **7. Academic Commentary**

- 7.1 During my stay in Lusaka, I made efforts to meet with the law faculty at the University of Zambia in Lusaka. However, a meeting was unable to be arranged as times convenient to both the faculty members and I proved difficult to arrange. In any case, my motivations for attempting to schedule a meeting was to discuss the possibility of initiating academic discourse in relation to contemporary judicial decisions emanating from the courts in Zambia. I believe that if academic lawyers at the University of Zambia engaged in critiquing legislation and judgments and comparatively analysed foreign jurisdictions both within Africa and internationally it would encourage legal practitioners and academics to strive towards a more transparent system and remedy inherent flaws within the system. In order to facilitate such an initiative, judgments emanating from the Superior Courts in Zambia need to be more readily available to the public in general. Only three judgments are available electronically from the official Zambian courts' system website [www.judiciary.gov.zm/](http://www.judiciary.gov.zm/). I propose that all written judgments should be accessible on this website as I believe this would encourage academic discourse and increase transparency in the Zambian legal system.



7.2 Similarly, the faculty of law in the University does not publish any legal journal. I firmly believe that such an initiative could help develop links between academics, both teaching staff and students, and legislative bodies and members of the judiciary. Currently, no such discourse is evident and it could help to foster a “checks and balances” ethos within the Zambian judicial system. I also spoke with Mr. Mathew Zulu and suggested he follow this up with the University after my departure. As I pointed out to Mr. Zulu, the journal could be produced electronically and therefore would remove any publishing costs for the university or other state bodies.

## **8. The Human Rights Commission in Zambia**

8.1 During my stay in Lusaka, I also made efforts to arrange meetings with advocates at the Human Rights Commission in Zambia to discuss their mandate and the way the Commission operates. Unfortunately, I did not have time for such a meeting; however, I feel it would be beneficial to make contact with the Commission; perhaps even in terms of suggesting that they are joined as *amicus curiae* in certain cases concerning alleged human rights abuses.

I hope this report has proved to be comprehensive and insightful. Should you have any queries in relation to the contents of this report please do not hesitate to contact me; my email address is michelleflynn@courts.ie.