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Enhancing the Prosecution in Zambia: An Examination of Prosecution in the Subordinate Courts of Zambia

Anne Bugayong
Julia Butterworth
Mwami Kabwabwa

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Acronyms

CPC	Criminal Procedure Code
DPP	Director of Public Prosecutions
GBV	Gender Based Violence
LLB	Bachelors of Law
NIPA	National Institute of Public Administration
NPA	National Prosecution Authority
ZIALE	Zambia Institute for Advanced Legal Education

Abstract

There is a dearth of academic research on the Subordinate Courts in Zambia. Currently, the majority of legal disputes in Zambia are adjudicated through the Subordinate Courts, which are the first courts of instance. Most of the research that occurs in Zambia's legal system focuses on the higher courts like The Supreme Court of Zambia. Out of the 117 districts, there are 64 Subordinate Courts (Republic of Zambia Judiciary, 2019). According to the Republic of Zambia Judiciary's 2019 Annual Report, a total of 43,949 cases were filed in the Subordinate Courts, 29,127 of which were criminal cases. On the other hand, in 2019, a total of 6,901 cases were filed in the High Court (Republic of Zambia Judiciary, 2019). In these statistics, it is evident that the majority of legal disputes and cases are tried through the Subordinate Courts, rather than the higher courts.

The purpose of this research study is to expand upon Dr. Tinenenji Banda's project report, *Access to Justice: Court Efficiency in Zambia*. Prosecutors are critical to upholding the integrity of the criminal justice system because they "exercise a variety of discretionary options over an individual's freedom, life, property, reputation, and well-being which are unmatched in power by any other official in the criminal justice system" (Alemika, 2009). Due to the prosecution's significance, it is important to study their immense influence in the legal system of Zambia and to identify the ways in which the actors in prosecution are limited in their capacity. An exploration of prosecution's capacity to successfully dispute cases will reveal pertinent information about the average Zambian's access to just outcomes in criminal cases. Based on a literature review and a series of interviews from key stakeholders

in the legal field, this paper aims to close the information gap on the Subordinate Courts in Zambia, specifically in regards to the prosecution system.

Introduction

A well capacitated and competent prosecution is key for just outcomes. In Zambia, criminal cases are tried by prosecutors, which indicates that every Zambian citizen with a criminal grievance fully depends on the prosecution to obtain justice. Similar to the lack of research on Subordinate Courts, there is an even larger information gap on the Subordinate Court's prosecution system in regard to their authority and capacity to charge defendants for criminal grievances. This research gap is crucial as the prosecution plays such a significant role in the judicial system. Our research hopes to close this knowledge gap and give more information about the efficiency and effectiveness of Subordinate Courts as it relates to the prosecution. The scope of the Subordinate Courts' authority can be gleaned from an examination of the National Prosecution Authority (NPA) Act No. 34 of 2010 and The Criminal Procedure Code. The aforementioned laws have salient provisions that pertain to the role of the prosecution in Zambia's Subordinate Courts, which will be the focus of the paper. Banda's project report provides important information on the Subordinate Court as it relates to the efficiency of the legal system in Zambia. Additionally, Banda's work analyzes The Subordinate Courts Act of 1936 and other significant publications that explain the Zambian legal system. Our paper will use Banda's research to investigate the prosecution's mandate while identifying issues that arise during proceedings in the Subordinate Courts as the prosecution attempts to secure justice. Through analysis of

literature and stakeholder interviews, our paper will provide insight into how the capacity of prosecution can be enhanced.

This paper first begins with an overview of the methodology before diving into a literature review and the presentation of interviews. The literature review provides a discussion on what other scholars have written on this contemporary issue, and how this research differs from what has already been written and the significance of this study to the body of knowledge in this area. Afterwards, a presentation of the findings of conducted interviews explains the various functions and roles of major players within the criminal justice system such as magistrates, prosecutors, police officers, legal academics and defense lawyers. Additionally, we will analyze the common themes in the findings and connect the main conclusions back to the literature review. Finally, we will conclude with the most significant issues and share stakeholder recommendations.

Methodology

This research uses a mixed methods approach. The first component of the research is desk-based, and the second component is qualitative. In terms of the first component, an assortment of primary and secondary sources such as legislation, reports, and journal articles have been consulted. As to the qualitative component, interviews have been conducted with key stakeholders relevant to the area of research. Stakeholders interviewed include: magistrates, prosecutors, defense attorneys, legal academics, and police officers. Our interviews adopt a snowballing approach in which initial contacts introduce us to further contacts relevant to the research. For each of the interviews, interviewees were informed of the purpose of the research. Furthermore, the interviewees

were given the option to remain anonymous. Permission to record the interview for the purposes of accuracy was sought. In light of the COVID-19 pandemic, the majority of interviews were conducted via Zoom. All research was conducted between the period of June to July 2021.

This study is conducted in partnership with the Southern African Institute for Policy and Research (SAIPAR) and under the supervision of Dr. Tineneji Banda, a lecturer in the private law department at the University of Zambia and the Associate Director of Legal Research at SAIPAR.

Background

Zambia's Legal Framework

Zambia's legal framework is pluralistic. According to Oxford, legal pluralism refers to the "idea that in any one geographical space defined by the conventional boundaries of a nation state, there is more than one law or legal system" (Legal Pluralism, 2012). In Zambia, both the common law and customary law are recognized sources of law. The common law is "law that is derived from judicial decisions instead of from statutes" (Banda, 2019). On the other hand, customary law "does not refer to a single system but instead a set of rights, liabilities and duties across diverse ethnic groups" (Banda, 2019). Additionally, Zambia has a four-tier hierarchy court system which includes "first instance courts, specialized and fast-track courts, appellate courts and the highest instance courts" (Banda, 2019). This paper will focus solely on the Subordinate Courts, otherwise known as the Magistrates Courts, which are the courts of first instance. Subordinate Courts obtain their power from the Subordinate Courts Act, the Criminal Procedure Code, Chapter 88 of the Laws of Zambia

and the Penal Code, Chapter 87 of the Laws of Zambia, and other statutes relating to civil and criminal jurisdiction (Subordinate Courts, 2020).

Background of Prosecution in Zambia

Following the enactment of the NPA Act, there was a migration of prosecutors from Zambia Police to the NPA.¹ During this migration, the entry qualification for prosecutors at the NPA was a Bachelors of Law (LLB).² Further during the migration/transition there were police prosecutors who were holders of a grade twelve certificate and in some cases diplomas from the National Institute of Public Administration (NIPA). Police prosecutors were given time in which to acquire LLBs between 2010 and March 2021.³ From the NPA management in the long run, they hope to have all their prosecutors as qualified lawyers and advocates capable of appearing either before the Subordinate Court or High Court.⁴

The Role & Significance of Prosecution in Criminal Cases

The National prosecution Authority (NPA) is “an autonomous body established by the National prosecution Authority Act No. 34 of 2010” (*National Prosecution Authority, 2017*). The NPA’s mandate is to prosecute people charged with criminal offenses. Prosecutors are “primarily responsible for preparing charges and arraigning accused persons before competent courts or tribunals for trial” (Alemika, 2009). They investigate criminal offenses in cooperation with the police, “determine appropriate charges for criminal infractions, and

¹ Interview with NPA Prosecutor on 16 July 2021 via Zoom.

² Interview with NPA Prosecutor on 16 July 2021 via Zoom.

³ Interview with NPA Prosecutor on 16 July 2021 via Zoom.

⁴ Interview with NPA Prosecutor on 16 July 2021 via Zoom.

present evidence before judges to enable them to determine the culpability of accused persons” (Alemika, 2009). Thus, prosecutors have enormous influence in the criminal justice system in Zambia because their ability to sustain or drop charges impacts the freedom of those charged with crimes.

Prosecutors “exercise a variety of discretionary options over an individual’s freedom, life, property, reputation, and well-being which are unmatched in power by any other officials in the criminal justice system” (Alemika, 2009). Prosecutorial discretion allows officials to have professional independence, which is important because it enhances the ability of the prosecution to remain impartial and less susceptible to outside influences.

Recall that the general purpose of the prosecution is to improve the effectiveness of the criminal justice system. The role of prosecutors goes beyond representing the interests of the State and or securing a win in a criminal case, but is fundamentally rooted in ensuring that justice is served and that the court arrives at just outcomes. The NPA is involved in a criminal case from the moment that the police in charge of investigation hands over the docket to the NPA prosecutor.⁵ Section 10(6) of the NPA Act stipulates that prosecutors in the execution of their duties shall:

- (1) Protect the interest of the public and act with objectivity, taking into account all relevant circumstances regardless of whether they are to the advantage or disadvantage of the suspect;
- (2) Carry out their functions impartially;
- (3) Avoid discrimination of any kind.⁶

⁵ Interview with Police Officer on 28 June 2021 at Intercity Police Station.

⁶ National Prosecution Authority Act No. 34 of 2010.

Significant Laws

The Constitution of Zambia

The Constitution of Zambia, as the supreme law of the land, recognizes the significant role that the prosecution plays in maintaining the rule of law. This is evident from the provision of the Constitution which provides that The Director of Public Prosecutions (DPP) shall not be subject to the direction or control of a person or an authority in the performance of the functions of that office, except that the DPP shall have regard to the public interest, administration of justice, the integrity of the judicial system, and the need to prevent and avoid abuse of the legal process.⁷ Thus, the Constitution provides for the independence of the NPA.

The National Prosecution Authority Act No. 34 of 2010

The NPA Act was derived from a process that was tasked with coming up with recommendations that would produce a national criminal prosecutions' policy aimed at enhancing the efficaciousness of the DPP's office and protecting its independence (*The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa*, 2009). Furthermore, maintaining the rule of law and having a fair criminal justice system are key principles that informed the establishment of the NPA Act. The NPA Act establishes the National Prosecution Authority. The Act establishes and outlines the powers and roles of the NPA; provides a framework to enable effective administration of the criminal justice system; establishes the witness management fund; and makes provision for all matters

⁷ Constitution of Zambia Amendment Act No. 2 of 2016 Article 180(7).

connected with and or incidental to the foregoing in respect of the NPA. The mission statement of the NPA is “provide effective and efficient prosecution services to the public in an accountable and transparent manner in order to uphold the rule of law, justice, and human rights” (*National Prosecution Authority, 2017*).

The salient provisions of the NPA Act include: Section 5, Section 6, and Section 8. Section 5 outlines the main functions of the NPA.⁸ Section 6 establishes the independence of the NPA by providing that the NPA shall not in the execution of its function be susceptible either to the direction or control of any person or authority, but for the DPP. Lastly, Section 8 lists the functions of the DPP.⁹

The Criminal Procedure Code (CPC)

The Criminal Procedure Code (CPC) regulates the procedures to be followed by all courts in criminal matters. The salient provisions of the CPC as it relates to the prosecution system are Section 81, Section 86, and Section 88(a). Section 81 provides for the power of the DPP in any criminal case, before judgment is passed, to enter a nolle prosequi either by stating

⁸ Main Functions of the NPA:

- Appoint Prosecutors and State Advocates and promote appropriate standards of practice by prosecutors in criminal prosecutions.
- To implement an effective prosecution mechanism so as to maintain the rule of law and contribute to a fair and equitable criminal justice system and the effective protection of citizens against crimes.
- To process all dockets and prosecute criminal cases and appeals in the courts of law.
- To cooperate with police, the courts, the legal profession and other government agencies or agencies or institutions so as to ensure the fairness and effectiveness of prosecutions.

⁹ Main Functions of the DPP:

- Institute and undertake criminal proceedings against any person before any court.
- Discontinue any criminal proceedings instituted and undertaken by the DPP before judgment is delivered.
- Set the qualifications for the appointment of prosecutors.
- Review a decision to prosecute or not to prosecute a criminal offence.
- Advise the Minister on all matters relating to the administration of criminal justice.

in court or in writing to the court that proceedings shall not continue and that the accused shall stand discharged in respect of the criminal charge in question.¹⁰ Section 86 empowers the DPP to appoint public prosecutors to prosecute criminal cases instituted on behalf of the people.¹¹ Lastly, Section 88(a) provides for withdrawal from prosecution in trials before the Subordinate Courts. According to this section, in any trial before a Subordinate Court, any public prosecutor may, with the consent of the court or on the instructions of the DPP, at any time before judgment is pronounced, withdraw from the prosecution of any person. Upon such withdrawal, the defendant shall be discharged. Furthermore, such discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts.¹²

Relationships Between Significant Governing Bodies

The main governing bodies that affect the prosecution are the NPA, the local police, and the Subordinate Court. The police obtain witness reports, evidence, and the reports of crime. They are the legal actors who provide the evidence for the prosecution's cases. Moreover, many police officers became prosecutors and have been uniquely linked to prosecuting procedures until 2010 when the passing of the National Prosecuting Authority Act No. 34 created a clear delineation between the police and the NPA. As established earlier, the NPA is the primary body responsible for prosecutions. It is headed by the DPP who is the "Chief Prosecutor for Government."¹³ Lastly, the Subordinate Courts hear and assess the evidence

¹⁰ Criminal Procedure Code of the Laws of Zambia.

¹¹ Criminal Procedure Code of the Laws of Zambia.

¹² Criminal Procedure Code of the Laws of Zambia.

¹³ Constitution of Zambia Amendment Act No. 2 of 2016 Article 180.

from the prosecution and the defense and renders a verdict. These governing bodies all support the prosecution system with their roles and functions.

Literature Review

Court Efficiency

There is a scarcity of literature on the efficiency of the criminal justice system in Zambia. In the few studies of the judicial system in Zambia, scholars note that there are a myriad of inefficiencies that impede justice. For instance, Muna Ndulo, an internationally recognized scholar of law, noted that in Zambia it is “generally agreed on by all stakeholders that the judicial system needs reform to make it more accountable, independent, and able to deliver justice efficiently and effectively” (Ndulo, 2011). Banda supports Ndulo’s assertion that there is a lack of equity in Zambia’s judicial system, seeking to examine “how efficiently the courts dispense justice and how ordinary citizens seeking legal remedies interface with the judicial system” (Banda, 2019). Banda emphasized that there is a “widespread belief that the courts are inefficient” based largely on anecdotal and impressionistic evidence (Banda, 2019). However, there is limited empirical data on the performance of Zambian courts, so Banda sought to address this research gap through both qualitative and quantitative methodologies (Banda, 2019).

Using a non-participant observation method that encompassed a multi-dimensional approach, Banda studied the Subordinate Courts of Lusaka. Then, using content analysis, Banda surveyed judicial decisions in order to document the reasons courts cite for delay, while quantitatively calculating the disposition times of published civil High Court Judgements and Rulings delivered between 2011 and 2017 (Banda, 2019). Banda’s study

resists the common “penchant to lay all the blame for court delay at the doorsteps of the judiciary” and concludes that “the courts are just one factor in the unhappy story of court delay and congestion” (Banda, 2019). Thus, there are multiple factors that affect judicial efficiency in the Subordinate Courts. Our research will expand on Banda’s project report, focusing on how prosecution is a factor that can impede justice at the Subordinate Court level.

Prosecution

There is limited research on how the prosecution at the Subordinate Court level in Zambia can be improved. Etannibi E O Alemika’s policy brief *Prosecution in Sierra Leone, Tanzania and Zambia* published by the *Institute of Security Studies* highlights how prosecution services in Sierra Leone, Tanzania, and Zambia face similar problems. These problems include inadequate professional autonomy, a lack of capacity owing to inadequate personnel and funding, and delays in prosecution, partly on account of the poor crime investigation capacity by the police (Alemika, 2009). Alemika concluded that effective “solutions to these problems are therefore required to establish efficient, transparent and trustworthy prosecution services in these countries” (Alemika, 2009). Our research focuses specifically on the prosecution at the Subordinate Court level in Zambia and strives to find effective solutions to the problems identified in the aforementioned policy brief.

Another publication with important contributions on the prosecution in Zambia is Masialeli Situmbeko’s doctoral dissertation, *The National Prosecuting Authority Act of 2010: What is its Relevance to the Criminal Justice Delivery System in Zambia*. This source discusses the National Prosecution Authority (NPA) Act as well as recommendations for reforming

the NPA Act. This source also uses interviews from important stakeholders, including police prosecutors and staff at the Office of the DPP (Situmbeko, 2013). The author notes that the NPA was created due to the burdensome workload of the DPP. Because of the many responsibilities, the DPP delegated its tasks onto other organizations such as “Drug Enforcement Commission (DEC), National Pension Scheme Authority (NAPSA), Department of Immigration and Zambia Wildlife Authority (ZAWA), and the Anti-Corruption Commission (ACC)” (Situmbeko, 2013).

In addition, this dissertation discusses the specific challenges of the prosecution system in Zambia: “(1) Lack of Academic Qualifications and Training, (2) Too Many People Given the Power to Prosecute, (3) Lack of Specialization, (4) Political Interference, (5) Poor Witness Management, (6) Shortage of Experienced Prosecutors, (7) Lack of prosecution Policy, (8) Lack of Public Awareness and Cooperation, (9) Organizational Capacity, and (10) Delays Caused by Waiting for Approval to Prosecute from the DPP” (Situmbeko, 2013).

While this study focuses on the prosecution system of Zambia, it does so generally and does not look specifically at the Subordinate Courts. Moreover, this study focuses specifically on the NPA Act and its effectiveness in ensuring justice and fixing the aforementioned challenges listed above. Our paper will address significant laws related to the prosecution system of Zambia.

Subordinate Courts

One important research contribution regarding the Subordinate Courts is S. J. Cooper-Knock and Anna Macdonald’s Oxford University Press publication, *A Summons to the Magistrates’ Courts in South Africa and Uganda*. The authors note how there is “a striking lack of attention paid to how and why people do engage with lower courts [...] in common

law countries and courts of first instance in civil law countries” (Cooper-Knock & Macdonald, 2020). The authors cite that on average, 13% of citizens in the African continent have come into contact with Subordinate Courts in the past five years, yet there is little evidence on their experiences as “claimants, respondents, defendants, or witnesses” (Cooper-Knock & Macdonald, 2020). The authors specifically focus on empirical research gathered from a three month study of the Ntuzuma Magistrates’ Court and two month study on the Gulu Magistrates’ Court from 2015-2018 (Cooper-Knock & Macdonald, 2020). This publication critiques the procedural justice model while proposing a tri-factor framework in the Subordinate Courts (Cooper-Knock & Macdonald, 2020). While this study recognizes the significance and lack of information regarding the Subordinate Courts, it only focuses on South Africa and Uganda. Furthermore, it does not focus on the specific legal actors within the Subordinate Courts, such as prosecutors. Our research specifically focuses on the prosecution’s role in the Subordinate Court rather than a general study of the Subordinate Court as a whole.

Another important contribution relating to the Subordinate Courts in Zambia is Sunday B. Nkonde SC and William Ngwira’s article, *Accused’s Rights and Access to prosecution Information in Subordinate Courts in Zambia*. This article discusses the impediment of justice at the sub-court level. It raises the issue of the Zambian criminal justice system in the Subordinate Court being notorious for delays in the disposing of cases. The frequency of adjournments is striking and this is usually blamed on defence lawyers (Nkonde & Ngwira, 2015). The article references cases, such as *People v. Kasonkomona* which indicates how the State failed to provide the defence with witness statements, and

thus impeded justice at the Subordinate Court level.¹⁴ This article focuses on the Subordinate Court's inefficiencies, while our paper will focus on the prosecution system's challenges in the Subordinate Court. Our paper is focused on a more specific niche than a general analysis of the Subordinate Courts in Zambia.

The aforementioned literature and publications have made significant additions to evaluating and analyzing the Zambian legal system as it relates either to the prosecution system or the Subordinate Courts. Our paper aims to fill the research gap of the intersection between the prosecution system and the Subordinate Courts. With a more focused analysis on this intersection, we hope to provide a thorough report of the prosecution's role in ensuring justice to the average Zambian at the subordinate court level.

Interview Findings

This section of the paper presents the findings of our research from stakeholder interviews conducted from June to July of 2021.

Lack of Witness Support

During our interviews with both an NPA Prosecutor and a Psychologist, it was noted that there are many lacking resources regarding witness support. The current prosecution system does not have adequate witness/victim protection particularly as it relates to children. For instance, a child victim has to testify and undergo cross examination in open court and in the presence of the accused, which creates a situation that traumatizes the

¹⁴ *The People v Kasonkomona* (ZMHC) 2013.

victim and leads to secondary victimization.¹⁵ Witness/victim support is a major problem in the current prosecutorial sector that affects the effectiveness of their testimonies. During the interview with the psychologist, he brought out examples in which female victims of gender-based violence go through in the prosecutorial system without any psychological or emotional support.¹⁶ It was noted that this is a barrier to effective prosecution as this makes the witness/victim less forthcoming as a result of psychological and emotional distress.

The NPA Act provides for a Witness Management fund.¹⁷ The purpose of this fund is to provide money and resources for transporting witnesses to and from court.¹⁸ It caters for logistics, travel and possible stay within the location of the court in which they will be required to appear and testify.¹⁹ In addition, the Act provides for counselling of witnesses before they testify in court. In this regard, prosecutors provide this counselling as the NPA does not have professional counsellors to provide counselling to witnesses/victims.²⁰ However, prosecutors are only able to provide counselling to witnesses/victims using the limited knowledge they have acquired from counselling witnesses/victims in the past. Their limited knowledge is not supported by psychological expertise, but is instead derived only through personal experience.²¹ Our research also established that if the counselling is done and the witness/victim is still not ready to testify, they are not forced to testify.²²

¹⁵ Interview with Dr. Mwewa Musonda on 7 July 2021 via Zoom.

¹⁶ Interview with Dr. Mwewa Musonda on 7 July 2021 via Zoom.

¹⁷ Interview with NPA Prosecutor on 13 July 2021 via Zoom.

¹⁸ Interview with NPA Prosecutor on 13 July 2021 via Zoom.

¹⁹ Interview with NPA Prosecutor on 13 July 2021 via Zoom.

²⁰ Interview with NPA Prosecutor on 13 July 2021 via Zoom.

²¹ Interview with NPA Prosecutor on 13 July 2021 via Zoom.

²² Interview with NPA Prosecutor on 13 July 2021 via Zoom.

More funding towards the NPA witness fund would make it possible for the NPA to hire trained psychologists or professional counselors that have expertise and knowledge. Our respondent emphasized that it is difficult to effectively counsel witnesses/victims in cases dealing with children, sexual offences and Gender Based Violence (GBV), without a professional background in counselling because as mentioned earlier, all prosecutors have in terms of counselling experience are the skills that they have picked up along the way.²³

The NPA Prosecutor contended that there should be a standard of how to deal with the emotional support of victims from a professional perspective, particularly when dealing with traumatic criminal offences. This can help prosecutors in obtaining useful evidence from the witness/victim. In the absence of professional emotional support, prosecutors might end up without sufficient evidence to successfully prosecute a matter.

Lack of Specialization

A legal academic emphasized that there is a need for capacity development for prosecutors and continuous training even for those who have already obtained their legal education.²⁴ He indicated that specialization is especially important for cases that involve money laundering, complex corruption, cyber cases, and banking.²⁵ The aforementioned crimes are all relatively new and require specialized skills, so it is pertinent that prosecutors receive ongoing training. Additionally, a Magistrate highlighted that crimes are region specific. For instance, in the southern part of Zambia, most people's economic activity

²³ Interview with Dr. Mwewa Musonda on 7 July 2021 via Zoom.

²⁴ Interview with Dr. O'Brien Kaaba on 25th June 2021 via Zoom.

²⁵ Interview with Dr. O'Brien Kaaba on 25th June 2021 via Zoom.

revolves around ranching and agriculture, so the vast majority of criminal cases are stock theft, wild life, poaching, and trafficking.²⁶ Due to the region-specific nature of the crimes, prosecutors need experience in those particular cases. If prosecutors move to a different region, those prosecutors would have to become familiar with the specialized crimes of that region. A Magistrate stated that “prosecutors cannot be jacks of all trades” and they need to develop skills through training on region-specific crimes.²⁷

These interviews noted that the lack of specialized training among prosecutors led to mishandling of certain cases that require a degree of expertise for successful prosecution. The interviews also observed that lack of specialization among prosecutors of criminal offences may result in wrongful acquittals and convictions.

Lack of Legal Training and Prosecutors

Interviews with a Defense Attorney, a Magistrate, and an NPA Prosecutor all indicated that a prominent issue within prosecution is a lack of formal legal education. Obtaining a legal education has not always been accessible. In 2006, the University of Zambia was the only school that offered a legal education.²⁸ According to a Magistrate, “the school could only have very few students, and even fewer would graduate”.²⁹ Furthermore, the passing rate for the Zambia Institute for Advanced Legal Education examination (equivalent to a bar exam in the United States) is extremely low. Despite this low supply, there are 64 Subordinate Courts in Zambia (Republic of Zambia Judiciary, 2019). From these contrasting

²⁶ Interview with Exnobert Zulu on 5 July 2021 via Zoom.

²⁷ Interview with Exnobert Zulu on 5 July 2021 via Zoom.

²⁸ Interview with Exnobert Zulu on 5 July 2021 via Zoom.

²⁹ Interview with Exnobert Zulu on 5 July 2021 via Zoom.

statistics, it is clear that there are not enough prosecutors to fill the demand. Currently, there has been an increase in private universities that are offering students the opportunity to obtain a legal degree. However, the passing rate for the “bar exam” is still notoriously low.³⁰ These statistics prove that not only is a legal education a limited commodity, but that there is an extreme shortage of prosecutors.

Because of the lack of prosecuting attorneys, police officers were initially allowed to become prosecutors.³¹ This was because police officers had the closest amount of knowledge when it came to criminal law and the elements needed to prosecute a criminal. While police officers were trained during their rotation to work with prosecutors and often had vast experiences, their lack of legal education was sometimes a handicap.³² Additionally, a Magistrate asserts that at times, the relationship between the police and prosecutors could be tense.³³ This is because police officers who became prosecutors eventually had authority over the police officers who were their previous supervisors. The shift in this relationship dynamic made it difficult for the prosecutors and the police officers to work cohesively and cooperatively.³⁴

The NPA Act sought to address this by decreeing that all prosecutors must hold legal degrees.³⁵ Note that since the introduction of the NPA Act, all police prosecutors that appeared before the subordinate court to prosecute criminal offences have been

³⁰ Interview with Exnobert Zulu on 5 July 2021 via Zoom.

³¹ Interview with Police Officer on 28 June 2021 at Intercity Police Station.

³² Interview with Defence Lawyer on 25th June 2021 via Zoom.

³³ Interview with Exnobert Zulu on 5 July 2021 via Zoom.

³⁴ Interview with Exnobert Zulu on 5 July 2021 via Zoom.

³⁵ National Prosecution Authority Act No. 34 of 2010.

transferred to the NPA and now fall under the NPA.³⁶ Moreover, a Magistrate contends that this de-linkage between the prosecutors and the police system makes obtaining justice less efficient; the relationship between the police and the prosecution was much better before the NPA Act was passed.³⁷

Limited Resources

In comparison to the private sector, prosecutors at the Subordinate Court level are underfunded, which lowers their capacity to successfully prosecute cases. A Defense Attorney indicated that Subordinate Court prosecutors do not have facilities for research, so many of them try to use their own resources.³⁸ Because there is no funding, prosecutors lack material resources to be adequately prepared for their roles. For instance, prosecutors cannot guarantee safety, compensation, or transportation for their witnesses.³⁹ Without aid, witnesses are unable to properly testify for the prosecution's clients. Additionally, lack of funding also prevents prosecutors from obtaining the most basic resources such as paper or the internet.⁴⁰ Without these vital materials, prosecutors are severely under-resourced and are crippled from maximizing their potential.

A Magistrate mentioned two vital limitations of prosecutors: the internet and court spaces.⁴¹ In regard to a lack of internet, rural areas have more difficulty than urban areas

³⁶ Interview with Exnobot Zulu on 5 July 2021 via Zoom.

³⁷ Interview with Dr. Mwewa Musonda on 7 July 2021 via Zoom.

³⁸ Interview with Defence Lawyer on 25th June 2021 via Zoom.

³⁹ Interview with NPA Prosecutor on 13 July 2021 via Zoom.

⁴⁰ Interview with Exnobot Zulu on 5th July 2021 via Zoom.

⁴¹ Interview with Exnobot Zulu on 5th July 2021 via Zoom.

obtaining internet connection.⁴² This becomes a major challenge as those in the rural area, with limited access to the internet, are not always able to immediately access statutory amendments. In regard to the limited court spaces, this is a major challenge since all trials are in-person.⁴³ For instance, there could be four to five trials occurring at the same time, but only two court rooms available.⁴⁴ This means that the court rooms must be shared according to the seniority of the Magistrates, which is a major inconvenience and delays proceedings.⁴⁵

Prosecutorial Discretion

According to an NPA Prosecutor, “the NPA’s Bible or guide in deciding whether to prosecute a criminal matter is the Penal Code and Section 88(a) Criminal Procedure Code”.⁴⁶ Section 88(a) gives prosecutors the power to withdraw the matter before court without providing reasons for doing so. However, withdrawal does not mean the case cannot be revived again. Withdrawal typically happens when the prosecution realizes that there is insufficient evidence to successfully prosecute a case. An NPA Prosecutor noted that not all cases before the NPA must be prosecuted and that the surrounding circumstances around a particular case are also taken into consideration before deciding to withdraw or prosecute.⁴⁷ When prosecutors exercise this discretion, they have to write to

⁴² Interview with Exnobot Zulu on 5th July 2021 via Zoom.

⁴³ Interview with Exnobot Zulu on 5th July 2021 via Zoom.

⁴⁴ Interview with Exnobot Zulu on 5th July 2021 via Zoom.

⁴⁵ Interview with Exnobot Zulu on 5th July 2021 via Zoom.

⁴⁶ Interview with NPA Prosecutor on 13 July via Zoom.

⁴⁷ Interview with NPA Prosecutor on 13 July via Zoom.

their supervisor accompanied by a letter by the complainant who wishes to withdraw or reconcile.⁴⁸ Prosecutors also take into consideration the best interests of the accused and complainant. However, the court has the final say and prosecutors can only make an application to the court to withdraw a particular matter. Though the court rarely questions a prosecutor's use of Section 88(a), they do have a say when the NPA applies to withdraw a matter. If the court thinks it is not a good decision on part of NPA, that offense still stands and will be prosecuted to its logical conclusion.⁴⁹

Discussion of Interview Findings

Lack of Witness Support

A barrier to effective prosecution is the lack of mental health support for witnesses and victims of crimes, such as gender violence and defilement. The aforementioned crimes often cause psychological and emotional distress, which can inhibit a victim or witness from giving a strong testimony in court. When witnesses/victims are not given adequate emotional support in relation to their mental health, it affects the prosecution's case in the sense that the witness/victim is not able to provide the prosecution with adequate evidence that would lead to successful prosecution. This is because the witnesses/victims could miss crucial parts of the testimony if they are traumatized or not emotionally prepared to testify.

Lack of Specialization

⁴⁸ Interview with NPA Prosecutor on 13 July via Zoom.

⁴⁹ Interview with NPA Prosecutor on 13 July via Zoom.

Specialization of prosecutors ensures that prosecutors work with criminal cases at a higher level of expertise. This ensures that criminal cases are prosecuted taking into account the nuanced and more complex aspects involved in a crime, which would be lacking in the case when a prosecutor without specialty handles a complex criminal matter. Specialization makes it possible for prosecutors to detect missing critical evidence or elements in relation to a crime which might be crucial to successful prosecution of crimes at an early stage. The lack of specialization among prosecutors indicates that the same prosecutor that handles cases of aggravated robbery, for instance, also handles criminal cases, such as rape, defilement, theft, and murder. This reduces the level of efficiency among prosecutors which has a direct impact on court efficiency at the Subordinate Court as it relates to criminal cases. Specialization enhances court efficiency and access to justice. The fact that the NPA does not provide for adequate specialized units of prosecutors indicates that there is a need for urgent reform and attention. Furthermore, the caliber of prosecution among prosecutors is likely to increase where there is specialization. Thus, specialization increases the effectiveness of prosecutors because it prevents situations wherein cases are unable to move to a critical stage and it also prevents a waste of resources.

Lack of Legal Education/Training and Shortage of Prosecutors

Legal education and training are the foundation of a knowledgeable and efficient prosecutor. Without an adequate education and continuous training, there will be a lower quality of prosecutors along with inefficiencies and disparities in the justice system. While police officers, who now work under the NPA are encouraged to obtain a legal degree, they are still in a transition to obtaining those qualifications. Police prosecutors do receive training during their rotation; however, this does not grant them a thorough understanding

of the laws nor the legal proceedings. Additionally, a legal education is not a free resource. There continue to be barriers to obtaining the qualifications to become a prosecutor such as the tuition, the low passing rates for the “bar exam,” and the egregious underfunding of prosecutors. Additionally, continuous legal training is lacking. With more complex and specialized crimes (i.e. financial crimes, cybercrimes, etc.), prosecutors are not adequately equipped to prosecute these highly specialized cases. The prosecution cannot fully function to their capacity without legal education and continuous legal training. A thorough comprehension of the laws, the processes, and the crimes is pertinent in creating a balanced judicial system.

Limited Resources

In comparison to the higher courts, prosecutors at the Subordinate Court have fewer material resources. This lack of resources at the Subordinate Court level lowers the capacity of the prosecution because it affects the prosecutors’ ability to support witnesses before they testify and gather research to support their case. A Magistrate mentioned two limitations of prosecutors, which are the lack of strong internet connections in rural regions of Zambia and court spaces. The lack of a strong internet connection inhibits the prosecutions’ ability to research laws and updated amendments and connect with colleagues. Furthermore, the lack of court spaces lowers the capacity of the prosecution because less cases are able to be heard by Magistrates. This slows down the administration of justice in Zambia.

Prosecutorial Discretion

The decision whether or not to prosecute a criminal offence is the sole preserve of the NPA. This decision affects not only the parties involved but the interests of society as a whole and must be exercised judiciously. The exercise of prosecutorial discretion in the absence of reasons and or guidelines raises valid concerns of possible abuse of discretion and a failure to exercise the discretion consistently. These concerns are threats to the effective and fair administration of the criminal justice system. In an effective criminal justice system, justice must not only be done, but must be seen to be done. However, in the absence of guiding factors and or reasons as to why prosecutorial discretion has been exercised in a particular way, it becomes difficult for the public to see that justice is being done. Further, the lack of guidelines is problematic. One example is there is a lack of guidance as to what point in the progression of a criminal case the prosecution can decide to withdraw the matter. Without specific guidelines on the timeline of a trial with regards to when the prosecution can decide to withdraw, there could be a wastage of resources. The state could potentially spend resources associated with the life cycle of trying a criminal matter only to have it withdrawn. This in turn limits the effectiveness of the prosecution and also makes it difficult to have a systematic and efficient criminal justice system.

Recommendations

Witness Support

The first recommendation of this research project is an increase in funding towards the NPA Witness Management fund to provide witnesses compensation, safety, and emotional support.⁵⁰ When witnesses have to appear in court, they face the barrier of missing their work or being unable to attend to their responsibilities. Increasing the NPA Witness Management Fund and providing them compensation, would mean that witnesses would be incentivized to appear before the court as they are not overly burdened from being away from their other responsibilities. Additionally, witnesses might be placed in uncomfortable or threatening situations by testifying against a defendant. In the United States, there are Witness Protection Programs that provide witnesses additional safety measures to ensure their wellbeing during the trial process. Providing witnesses safety would alleviate the potential threats or consequences of testifying against a defendant in court (U.S. Marshals Service, Witness Security Program). Lastly, by increasing the funding in the NPA Witness Management Fund, the NPA would be able to have professional psychologists or counsellors to assist with providing witnesses/victims emotional support. Witnesses could potentially be traumatized or be handling overwhelming emotions, which prevent them from giving adequate or successful testimonies in court. Having the assistance of professional psychologists or counsellors would ensure the witness' ability to provide adequate evidence that will enable the successful prosecution of a case.

⁵⁰ Interview with NPA Prosecutor on July 13, 2021.

Specialization

Another recommendation would be that the NPA introduce specialization within prosecutors.⁵¹ Prosecutors are currently dealing with a diversified caseload, some even handling a variety of different cases in one day. A lack of specialization places a large burden on prosecutors to have specific knowledge of an array of topics. The current system, however, is not adequate enough to ensure fair justice as crimes are becoming more complex and prosecutors are no longer able to keep up with the increasing intricacies of specialized cases, such as cybercrimes and financial cases. The specialization of prosecutors would also ensure that prosecutors are adept in region-specific crimes, such as poaching and stock theft.⁵² Specialization is necessary for prosecutors to be prepared in adequately comprehending the case and being successful in prosecuting a criminal case.

Legal Education/Training

A third recommendation would be requiring the prosecutors to have legal degrees in order to practice. While current police prosecutors are encouraged to obtain legal degrees under the NPA, many of them do not have the resources available to finance their legal education. Going back to school would imply that police prosecutors would be students that might not have access to an income. Because there is a lack of financial resources, police prosecutors are not highly incentivized to get their educational credentials. Moreover, the lack of financial resources also contributes to the lack of continuous legal training. Given that the law is dynamic, it remains crucial for prosecutors to have consistent and continuous legal training.

⁵¹ Interview with Exnobot Zulu on July 5, 2021 via Zoom.

⁵² Interview with Exnobot Zulu on July 5, 2021 via Zoom.

Additionally, in some cases, prosecutors have to handle 10-15 cases per day.⁵³ The shortage of staff requires prosecutors to handle a burdensome workload of cases. By providing funding and eliminating the barriers to obtaining legal credentials, there would be an increase of prosecutors that would ease the current caseload.

Limited Resources

The lack of financial resources prevents prosecutors from obtaining legal education, continuous legal training, adequate material resources, and compensation. For instance, not all prosecutors have available access to law reports, journals, or a strong internet connection for research.⁵⁴ Access to these materials is necessary for prosecutors' everyday tasks and responsibilities. An increase in funding could also provide more court spaces which would ensure timely access to justice. Currently, all court cases are in-person.⁵⁵ With the overwhelming number of cases and the shortage of court-space, cases are tried less effectively. Furthermore, available translators are necessary for proper comprehension of court cases. There are approximately 72 languages spoken in Zambia (Zambian Languages). Thus, not having any translators at the NPA could lead to misinterpretation and communication issues during legal proceedings.⁵⁶ The limited access to these basic materials and resources causes delay in providing justice.

⁵³ Interview with Dr. Mwewa Musonda on 7 July 2021 via Zoom.

⁵⁴ Interview with Exnobot Zulu on July 5, 2021 via Zoom.

⁵⁵ Interview with Exnobot Zulu on July 5, 2021 via Zoom.

⁵⁶ Interview with Exnobot Zulu on July 5, 2021 via Zoom.

Prosecutorial Discretion

Prosecutorial discretion is a powerful tool in the hands of the prosecution. It is therefore important for the general public to have a guarantee that prosecutors who exercise this discretion are guided by a set of values that takes into account the interests of the public and the virtues of justice. Furthermore, if prosecutorial discretion is wrongly exercised, it runs the risk of compromising the public's confidence in the criminal justice system. It is therefore imperative that prosecutors are provided with general guidelines that will inform their decision to either prosecute or not prosecute a criminal offence. The paper recommends that prosecutorial discretion should not be eliminated entirely, rather there should be guidelines to inform or regulate how prosecutorial discretion should be exercised. Doing so would preserve the independence of the prosecution system.

Conclusion

The prosecution at the Subordinate Court level is an important body that helps ensure just outcomes for the average Zambian in the criminal justice system. The majority of legal disputes and cases are tried through the Subordinate Courts, rather than the higher courts. Thus, it is imperative that the capacity of the prosecution at the lower courts is enhanced.

When evaluating the ways in which the prosecution at the Subordinate Court level can be supported and improved, it is pertinent to address the needs of the prosecutors, witnesses, and victims. First, it is necessary to evaluate how the prosecution can prepare witnesses and victims both emotionally and physically. Victims of heinous crimes, such as defilement and GBV need to be supported, so that their testimonies accurately reflect what

happened and justice is carried out. They also need mental health counselors, so that they are not traumatized on the witness stand and/or re-victimized. Additionally, witnesses need transportation, housing, and other accommodations, so that they are able to attend trials.

Furthermore, a Magistrate's statement, "prosecutors cannot be jacks of all trades" indicates the need for prosecutorial specialization in Subordinate Courts.⁵⁷ Prosecutors need ongoing training in order to effectively try complex cases that involve money laundering, corruption, cyber cases, and banking. In addition, prosecutors need to become adept at dealing with region-specific crimes, such as stock theft, wildlife, poaching, and trafficking. The lack of resources available to prosecutors are noteworthy as well. Prosecutors need access to stronger internet connections, so that they can connect with colleagues and conduct legal research. Internet connections are weaker in rural areas than urban areas. Additionally, the lack of court spaces causes a delay in the administration of justice because less cases are able to be heard.

The literature review along with the stakeholder interviews conducted during this research have contributed to filling the information gap as it pertains to the understanding of the prosecution system in Zambia at the Subordinate Court level. We have illustrated this by not only indicating prosecution's challenges and barriers in their limited capacity, but also providing recommendations in which prosecution's capacity can be improved. The prosecution is a significant legal actor in obtaining court efficiency and fair representation.

⁵⁷ Interview with Exnbert Zulu on July 5, 2021 via Zoom.

By addressing the prosecution's limited capacity, justice for the average Zambian can be enhanced.

Limitations

This project encountered multiple limitations. The most unique and most prominent limitation is COVID-19. Due to the global pandemic and traveling restrictions, the research was conducted virtually. Authors Anne Bugayong and Julia Butterworth were located in the United States; thus, author Mwami Kabwabwa was the main point of contact in Lusaka, Zambia. Due to different time zones, authors Bugayong and Butterworth were limited in their contact and participation in some of the stakeholder interviews. Additionally, because this program was conducted virtually, there were issues of internet connectivity, time zone differences, and challenges in communication.

Another challenge faced was the limited literature and research available about the prosecution system in the Subordinate Courts of Zambia. Because the majority of research available on Zambia's legal system is focused on the higher courts, there is a lack of scholarly journals, articles, and research available about the Subordinate Courts or the prosecution system in Zambia. Because of the limited publications and knowledge available, much of this research is based on stakeholder interviews.

A final limitation was the limited time allotted for stakeholder interviews. The authors were unable to reach out to interviewees from the DPP or any interviewees who had experience as a witness in a Subordinate Court case. Also, time constraints meant that the authors could not always effectively snowball to find new contacts. Lastly, NPA

clearance to interview prosecutors was only obtained in the last week of the research, limiting the number of prosecutors that could be interviewed.

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References

- Alemika, E. E. . (2009, October). *Prosecution in Sierra Leone, Tanzania and Zambia*. Institute for Security Studies. <https://www.files.ethz.ch/isn/112458/NO14OCT09.pdf>
- Banda, T. (2019). *Access to Justice: Court Efficiency in Zambia*. Southern African Institute for Policy and Research.
- Cooper-Knock, S. J., & Macdonald, A. (2020). A Summons to the Magistrates' Courts in South Africa and Uganda. *African Affairs*, 119(477), 552–577.
<https://doi.org/10.1093/afraf/adaa026>
- Criminal Procedure Code Act Cap 88 of The Laws of Zambia

Legal Pluralism. (2012). Oxford Handbooks Online.

Masialeti. (2012). *The National Prosecution Authority Act of 2010: What is its Relevance to the Criminal Justice Delivery System in Zambia?* University of Zambia Law.

National Prosecution Authority Act No. 34 of 2010

National Prosecution Authority (2017). National Prosecution Authority.

Ndulo, M. (2011). Judicial Reform, Constitutionalism and the Rule of Law in Zambia: From a Justice System to a Just System. *Zambia Social Science Journal*, 2(3).

Nkonde, S. B., & Ngwira, W. (2015). *Accused's Rights and Access to prosecution Information in Subordinate Courts in Zambia*. Southern Africa Litigation Centre.

Situmbeko, M. (2013). *The National Prosecuting Authority Act of 2010: What is its Relevance to the Criminal Justice delivery system in Zambia?* (Doctoral dissertation).

Subordinate Courts. (2020, October 12). Judiciary of Zambia.

<https://judiciaryzambia.com/subordinate-courts/>

The Criminal Justice System in Zambia: Enhancing the Delivery of Security in Africa. (2009). African Human Security Initiative.

The People v Kasonkomona (ZMHC) 2013.

(USMS), U. S. M. S. (n.d.). *U.S. Marshals Service*. U.S. Marshals Home Page

<https://www.usmarshals.com/>

Zambian Languages. *Zambian Translators International*. (n.d.).

<https://zambianlanguages.html>