

**THE TROUBLING SHORTAGE OF AFRICAN LAWYERS:
EXAMINATION OF A CONTINENTAL CRISIS USING
ZAMBIA AS A CASE STUDY**

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ABSTRACT

This Article examines the critical shortage of lawyers in Africa, using Zambia as a case study. The Article draws on information from a variety of sources, including field interviews, survey data, and case data from Zambian courts, in addition to secondary-source material. Though other work has dealt with access to justice in Africa broadly and with issues that affect access to justice,

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including African legal education, prison conditions, and alternatives to formal legal representation, this Article is the first comprehensive analysis of the causes of the scarcity of African lawyers, the effects of the shortage, and potential avenues for addressing the crisis, including measures for making more efficient use of currently available legal resources and reforms to increase the size of the African bar. Now, because of the extreme scarcity of African lawyers, most criminal defendants go without representation, and most Africans with civil claims have no reasonable possibility of hiring a lawyer. The causes of this crisis date to colonial policies that discouraged higher education for native Africans. More recently, donor fatigue and the limited availability of public resources for education, compounded by World Bank and IMF austerity measures, have perpetuated the problem. Likewise, poor policy choices at African law schools and African bar admissions programs have exacerbated the dilemma. Zambia, and other countries in the region, could enhance the impact of their limited legal communities by allowing the use of contingency fees, reducing or eliminating the civil caseloads of overburdened and understaffed legal aid departments, and making more extensive use of paralegals. African law schools could improve the quality of their graduates by implementing policies to combat rampant dereliction of duty by their faculties, pedagogical reforms, and policies to increase student access to learning materials. Additionally, low bar pass rates would likely improve if bar admissions programs reformed their curricula, changed hiring practices, and implemented transparent grading practices. Ultimately, growth of the African bar is crucial to ensuring adequate safeguards of the rights of criminal defendants, litigating complex civil claims, negotiating the balance between the competing traditions of the dual legal systems of most African countries, and building and sustaining societies subject to the rule of law.

1. INTRODUCTION

It takes a little over an hour on a Monday morning for Alice Sitali to meet with four clients.¹ The first one, she says, “borrowed some money from a Shylock,” to whom he has since paid back ten

¹ The events described in this vignette are based on field notes taken in the Lusaka office of Zambia’s Legal Aid Board on Sept. 20, 2010.

times the amount of the original loan. “Did you sign any agreement?” Mrs. Sitali asks, “because even Shylocks have laws that govern them. They’re supposed to operate within the limitations of the Moneylenders Act.”

Before the client leaves, Mrs. Sitali warns him that to proceed with an application for legal aid, “you have to tell the truth, no matter how embarrassing it is, or we won’t help you.”

Another client, a slightly disheveled young man wearing slip-on canvas shoes, jeans, and a t-shirt, is seeking compensation from a stone-crushing company where he was once employed. Apparently, the company does not provide workers with protective gear, and Mrs. Sitali’s client went blind in one eye after a stone splinter pierced his pupil. He hopes to get twenty-five million kwacha² for his injury.

As soon as one client leaves the office, another is at the door, and by 10:30AM, Mrs. Sitali is sitting across from a slight man who talks so softly that at first she is unable to understand him. “I can’t get you,” Mrs. Sitali says, and the man speaks up. He is not her client, but his lawyer has been unavailable, and he has a court date the next day. Mrs. Sitali tells him she will try to find another lawyer from the office to work on the case, which has been in progress for almost five years. The man is a police officer, but he was charged with attempted aggravated robbery, and he has been suspended from work since his arrest. “I feel that I am being tortured, because the five years, it feels like it’s doubled, it’s like ten years,” he says. He says there has been no trial date for almost a year, and the last scheduled court date, in August, was delayed again for the judge to attend a conference in Livingstone. The man claims he was an innocent bystander at the robbery and that he had never met his co-defendant before the trial began.

Mrs. Sitali is one of only seven legal aid lawyers in Lusaka and one of only twenty-four in all of Zambia.³ She says the suspended police officer’s case is unusual. “There are very few that go for five years . . . but some do, sometimes the file goes missing.” She has an amiably imperious presence as she presides over her office, which seems to be an epicenter of department activity; secretaries

² This amounts to a little under 5,000 USD at prevailing exchange rates as of January 2012. See *Currency Converter Widget*, XE.COM, <http://www.xe.com/ucc/convert/?Amount=25000000&From=ZMK&To=USD> (last visited Feb. 14, 2012).

³ Interview with Anderson Ngulube, Acting Director of the Legal Aid Board, in Lusaka, Zambia (Sept. 14, 2010) (on file with author).

and legal apprentices filter into the room periodically, looking for advice and asking questions. Flies buzz along the walls, searching for an escape after infiltrating through the open, second-story window, which overlooks an alley littered with an old desk and dilapidated chairs and a severely wrecked pickup truck. Whatever accident damaged the truck must also have resulted in human carnage.

Mrs. Sitali's desk is neatly ordered and spare, with a few stacked files on each side and a large laptop in the middle. A small bookcase against the opposite wall houses several green binders containing volumes of the Laws of Zambia, and a bulletin board displays a duty roster, artwork by one of Mrs. Sitali's three children, and a photo of colleagues from the office at a Labour Day celebration. Mrs. Sitali wears a beige suit with a dark crew-neck shirt. Sitting at her desk, she talks about her workload. She says about seventy percent of her cases are criminal, but the High Court refers most of those cases to the office, and a disproportionate number of the clients who apply for legal aid directly have civil claims.

According to Anderson Ngulube, Acting Director of Zambia's Legal Aid Board, a quasi-governmental corporate body charged with providing legal representation to indigent Zambians in both criminal and civil cases, Mrs. Sitali's distribution of cases is fairly typical for Legal Aid Board lawyers.⁴ He estimates that each of the seven lawyers in the Lusaka office manages thirty-five to forty cases a month, the majority of which are criminal cases in the High Court and criminal appeals in the Supreme Court. Yet, with the government initiating tens of thousands of new criminal cases each year, there is little chance of assistance from a legal aid lawyer for the average Zambian charged with a crime. In fact, Zambia faces a critical shortage of lawyers. While the country's population is nearly thirteen million,⁵ there are only 731 lawyers in private

⁴ *Id.* In fact, inspection of the Legal Aid Board's central registry reveals the Board's caseload for 2009 was between 85.4 and 85.9% criminal. The Board took 2,127 criminal cases and 365 civil cases for all offices other than Mansa. Mansa received 175 applications for representation in criminal cases and 11 applications for representation in civil cases, but records from that office do not reveal how many of the applications the office accepted. *Id.*

⁵ According to the World Bank, there were 12,926,409 people in Zambia in 2010. See *Data: Zambia*, THE WORLD BANK, <http://data.worldbank.org/country/zambia> (last visited Feb. 14, 2012).

practice in Zambia,⁶ approximately one lawyer for every 17,695 people. The few lawyers who are available are concentrated heavily in urban areas, and, outside of Zambia's three largest cities, there are only thirty-five private practitioners in the country.⁷

The result is a system in which most criminal defendants must go without legal representation and most Zambians in need of any form of legal assistance have no choice but to be their own advocates. Meanwhile, a third of the more than 15,000 people detained in Zambian prisons have not had trials,⁸ and many spend years behind bars before the courts process their cases.⁹ Several factors have likely led to the scarcity of Zambian lawyers. At independence, in 1964, there were no Zambian lawyers,¹⁰ and, since then, numbers have stayed low due to failures in the Zambian legal academy and obstacles to bar admission. In large measure, these failures result from inadequate funding and the effects of the natural self-interests of monopolists. For most of Zambia's history as an independent nation, the University of Zambia (UNZA) maintained the country's only law school. The

⁶ Based on statistics gathered from the Law Association of Zambia offices on Dec. 6, 2010 in Lusaka, Zambia.

⁷ See *Directory*, LAW ASS'N OF ZAMBIA, <http://www.laz.org.zm/directory.htm> (last visited Feb. 14, 2012) (listing the number of private legal practitioners in Zambia who "passed the chair"). Interview with Edward Sakala, Executive Secretary of the Law Association of Zambia, in Lusaka, Zambia (Nov. 30, 2010) (on file with author).

⁸ See HUMAN RIGHTS WATCH, *Unjust and Unhealthy: HIV, TB, and Abuse in Zambian Prisons* 4 (2010), available at <http://www.hrw.org/en/node/89819/section/4/> (describing the growing number of people in Zambia's prison system who await their trials for long periods of time in overcrowded and unsanitary prison conditions).

⁹ See HUMAN RIGHTS WATCH, *Zambia: Prison Conditions Endanger Inmates* (2010), available at <http://www.hrw.org/news/2010/04/27/zambia-prison-conditions-endanger-inmates> (summarizing the findings of a Human Rights Watch Report on the deteriorating conditions of Zambian prisons, specifically focusing on the prison system's failure to "provide basic nutrition, sanitation, and housing for prisoners, and of the criminal justice system to ensure speedy trials and appeals"); HUMAN RIGHTS WATCH, *supra* note 8, at 4 (citing "police investigation failures, lack of bail, and lack of representation for accused persons" as the drivers of extended pre-trial incarcerations in Zambian prisons).

¹⁰ See Muna Ndulo, *Legal Education in Africa in the Era of Globalization and Structural Adjustment*, 20 PENN ST. INT'L L. REV. 487, 489 (2002) [hereinafter Ndulo, *Legal Education in Africa*] (explaining the reasons behind the unavailability of legal education in Africa during the colonial period, including an absence of in-country educational facilities, the minor role of lawyers in "colonial enterprise," the priority of training other professions, and the fear of providing legal education to colonial subjects).

lack of competition may have contributed to stagnation of Zambian legal education, and a dramatic scarcity of public resources has crippled the Zambian legal academy. In addition, the lawyers who run the bar admissions program have incentives to keep the number of Zambian lawyers low, to ensure that legal fees remain high.

The shortage of lawyers in Zambia has had repercussions at every level of the justice system. This Article will include analysis of the causes and effects of that shortage, using Zambia as a case study to examine similar problems, and potential solutions, throughout the continent.¹¹ Previous work has examined access to justice in Africa broadly.¹² Likewise, other authors have focused on topics that touch on African access issues, including African legal education,¹³ the application of customary law and various customary legal traditions,¹⁴ and alternatives to formal legal

¹¹ Like Zambia, countries throughout Africa have extremely low ratios of lawyers to people. See *infra* Section 2, Table 1.

¹² See generally ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY (PENAL REFORM INT'L & BLUHM LEGAL CLINIC OF THE NW. UNIV. SCH. OF LAW ed., 2007) (highlighting the problems surrounding the provision of legal aid in Africa and suggesting innovative ways of solving them).

¹³ See generally Kirsten A. Dauphinais, *Training a Countervailing Elite: The Necessity of an Effective Lawyering Skills Pedagogy for a Sustainable Rule of Law Revival in East Africa*, 85 N.D. L. REV. 53, 108 (2009) (analyzing and offering solutions to challenges confronted in legal education in Africa, with an aim towards offering effective legal skills to be applied in the "East African law school classroom"); Samuel O. Manteaw, *Legal Education in Africa: What Type of Lawyer Does Africa Need?*, 39 MCGEORGE L. REV. 903 (2008) (detailing the history of African legal education and recommending strategies for its improvement through "legal education reform"); Ndulo, *Legal Education in Africa*, *supra* note 10, at 487 ("[D]iscusses legal education in Africa, its development, its present organization, and the progress being made . . . in internationalizing legal education to meet the challenges of the twenty-first century.").

¹⁴ See generally C.R. CUTSHALL, *JUSTICE FOR THE PEOPLE: COMMUNITY COURTS AND LEGAL TRANSFORMATION IN ZIMBABWE* 10 (1991) (assessing data from Zimbabwe's community courts from 1981-1986 in an effort to provide a thorough study of "customary law in action"); Kenneth Kaoma Mwenda, *African Customary Law and Customs: Changes in the Culture of Sexual Cleansing of Widows and the Marrying of a Deceased Brother's Widow*, 11 GONZ. J. INT'L L. 3 (2007-2008), available at http://www.gonzagajil.org/index.php?option=com_content&view=article&id=168:african-customary-law-and-customs-changes-in-the-culture-of-sexual-cleansing-of-widows-and-the-&catid=68:volume-11-issue-1-2007-2008&Itemid=26 (questioning the legality, under African customary law, of customs that encourage the sexual cleansing of widows and restrict their property rights); Kenneth K. Mwenda et al., *Property-Grabbing Under African Customary Law: Repugnant to Natural Justice, Equity, and Good Conscience, Yet a Troubling Reality*, 37 GEO. WASH. INT'L L. REV. 949 (2005) (examining the failure of African customary law to

representation.¹⁵ To date, however, no scholarship has concentrated on access to justice issues through assessment of the causes of the shortage of African lawyers and of potential measures to increase the size of the African bar. This Article provides such analysis, including recommendations both for growing the Zambian bar and for making more efficient use of the lawyers currently admitted to practice. While alternative legal aid mechanisms, including using paralegals, can provide significant benefits to people without access to lawyers, lawyers are crucial to the effective adjudication of complex civil matters, to protect the fundamental rights of people facing serious criminal charges, and to ensure the development of a society subject to the rule of law.

Of course, increasing the number of lawyers in Zambia would not, in and of itself, ensure the availability of legal services to average Zambians. For example, in the United States, which has more lawyers, both per capita and in absolute terms, than any other country on earth,¹⁶ the poor face severe challenges in accessing adequate legal assistance.¹⁷ But more competition in the legal market would lower fees and, eventually, would force new lawyers to seek work outside the population centers in which they have currently clustered. Such growth, coupled with policy improvements to increase the impact of the Zambian bar, given its

recognize formal wills and the resulting phenomenon of “property-grabbing”); Abby Morrow Richardson, *Women’s Inheritance Rights in Africa: The Need to Integrate Cultural Understanding and Legal Reform*, 11 HUM. RTS. BRIEF 19 (2003-2004) (discussing the background behind women’s nonexistent inheritance rights under African customary law in Botswana, Ghana, and Zambia and highlighting the need for culturally-sensitive reform).

¹⁵ See, e.g., Hillery Anderson, *Justice Delayed in Malawi’s Criminal Justice System: Paralegals vs. Lawyers*, 1 INT’L J. CRIM. JUST. SCI. 1 (2006) (evaluating the shortcomings of legal aid in Malawi and the rise of paralegals as legal advisors for the poor).

¹⁶ Marcia S. Krieger, *A Twenty-First Century Ethos for the Legal Profession: Why Bother?*, 86 DENV. U. L. REV. 865, 875 (2009).

¹⁷ See, e.g., Laura K. Abel, *A Right to Counsel in Civil Cases: Lessons from Gideon v. Wainwright*, 15 TEMP. POL. & CIV. RTS. L. REV. 527 (2006) (discussing the difficulties faced by low-income Americans in vindicating their legal rights); Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785 (2001) (examining inadequate access to justice in the American legal system and proposing strategies for improving the system); Lua Kamal Yuille, Note, *No One’s Perfect (Not Even Close): Reevaluating Access to Justice in the United States and Western Europe*, 42 COLUM. J. TRANSNAT’L L. 863 (2004) (critiquing the American and Western European approaches to providing the poor with access to the legal system, and offering proposals for reform that borrow from both models).

present limited size, could significantly enhance access to justice in Zambia.

Ultimately, there is a dire need for increasing the size of the Zambian bar. Zambia, like most other sub-Saharan African countries, faces terrible problems with poverty, corruption, sickness, and social despair. To address these problems, Zambia, and countries facing similar crises, must build the capacities of their professional communities of doctors, scientists, agricultural experts, industrialists, and engineers, as well as their legal communities. Nonetheless, the task of building nations subject to the rule of law is essential to allow people in any of these other fields to reach their full potential, and lawyers are crucial to this process. They enable a state to fulfill its promises in all categories of life, creating predictability in the civil sphere and protection from random abuses in the criminal sphere. To that end, ensuring the growth of a country's legal community is as important as, and, arguably, a prerequisite to, the effective development of its communities of health workers, crop scientists, and entrepreneurs. By evaluating the scarcity of lawyers in Zambia and exploring possible reforms, I hope to provide insight on possibilities for reform across the region and in other parts of the world.

In Section 2 of the Article, I will provide an overview of Zambian legal history, with a focus on the institutional structure of the justice system and the development of the Zambian legal profession. Section 2 will also include a discussion of Zambia's framework for provision of legal aid services. In Section 3 of the Article, I will focus on criminal prosecutions and appeals in magistrates' courts, the High Court, and the Supreme Court. While the Zambian Constitution authorizes the High Court as a court of unlimited original jurisdiction,¹⁸ subordinate courts, creatures of statute overseen by magistrates, hear the vast majority of criminal cases in Zambia.¹⁹ The Supreme Court has unlimited appellate jurisdiction.²⁰ Section 3 of the Article will examine the sufficiency of legal representation in magistrates' courts and the High Court, including services provided by the Legal Aid Board

¹⁸ See CONST. OF ZAMBIA of 1991 (as amended by Act No. 18 of 1996) art. 94(1) (endowing the High Court with unlimited original jurisdiction except for cases over which "the Industrial Relations Court has exclusive jurisdiction").

¹⁹ See *infra* Section 3 (discussing the role of subordinate courts in Zambia and how they operate).

²⁰ CONST. OF ZAMBIA (as amended by Act No. 18 of 1996) art. 92(1).

and by private lawyers through the Legal Aid Committee of the Law Association of Zambia (LAZ). In Section 4, I will scrutinize possible reasons for the relatively low numbers of lawyers in Zambia, including challenges in Zambian legal education and the difficulties law graduates face in gaining admission to the bar. In Sections 4 and 5, I will examine alternatives to the use of lawyers currently available to the Zambian citizenry. In Section 5, I will provide a brief analysis of the workings of statutorily authorized local courts, which administer customary law, and of traditional courts, which function outside the formally sanctioned justice system. The operations of these customary law courts provide some relief from the strain Zambia's lack of lawyers puts on the Western-style justice system. At the same time, the use of customary law to suppress basic human rights, especially of women, underscores the need to increase access to lawyers and to the higher courts of Zambia's formal justice system. Section 6 of this Article will be an analysis of substitutes for formal legal representation in Zambia's common law courts, with a focus on the role of paralegals. Due to liberal and ambiguous provisions of Zambia's Legal Practitioners Act, paralegals are able to fill some of the gaps left by the lack of sufficient numbers of lawyers to service the country's legal needs. In Section 7, I will conclude the Article with a discussion of possible avenues for improving access to justice for Zambians, including possibilities for increasing the size of the Zambian bar, for making more efficient use of lawyers currently admitted to practice in Zambia, and for alternatives to formal legal representation. Throughout the Article, I will provide a comparative analysis of challenges confronting other African countries and the institutional mechanisms available to meet those challenges. Though I will include examples from around the continent, I will focus, to some extent, on former British colonies, whose common law systems and colonial histories most closely resemble Zambia's.

2. EVOLUTION OF THE ZAMBIAN JUSTICE SYSTEM

Before Zambian Independence in 1964, the colony, known as Northern Rhodesia, operated under a dual-court system in which, except for serious criminal charges, common law courts were reserved for white colonialists, whereas customary law courts

resolved disputes between Africans.²¹ This system was typical of British colonial Africa.²² Lawyers were excluded from the customary courts, and when Zambia gained independence, there were no black African lawyers in the country.²³ In part, the early lack of Zambian lawyers resulted from a broader failure to promote education for native Africans. In fact, at independence the country had no universities, and there were only 100 Zambian graduates of foreign universities.²⁴ Ninety-seven of these had degrees in education, one was an engineer, and two were medical doctors.²⁵

Perhaps also at play was a desire by British colonial administrators to discourage the development of a profession so closely linked to political engagement and activism.²⁶ To train African lawyers would have risked undermining the system of subjugation at the heart of the colonial enterprise. In fact, legal education through domestic institutions in any English-speaking African colony was almost non-existent, and African lawyers were

²¹ See Sally Engle Merry, Review Essay, *Law and Colonialism*, 25 L. & SOC'Y REV. 889, 897, 900 (1991) ("[T]his customary law, now touted as indigenous African law and the basis for a new unified African legal system, is the product of colonial relations and incorporates the inequalities of the colonial past."); Ndulo, *Legal Education in Africa*, *supra* note 10, at 489-90 n.10 (stating that, in colonized African countries, a dual court system existed in which "common law courts were generally reserved for legal matters involving White colonialists, and local customary courts were limited to disputes between Black African Natives").

²² See CUTSHALL, *supra* note 14, at 12-13 (explaining the operation of this segmented court system in pre-Independence Zimbabwe); Merry, *supra* note 21, at 897 (noting that this "dual court system" was typical of court systems in colonized African countries); Ndulo, *Legal Education in Africa*, *supra* note 10 at 489-90 n.10 (describing the segmented court system that characterized the "colonial enterprise" in colonized African countries).

²³ See Ndulo, *Legal Education in Africa*, *supra* note 10, at 489 (emphasizing the absence of Black lawyers in Zambia when Zambia gained its independence).

²⁴ *Id.* at 489-91.

²⁵ *Id.*

²⁶ See Dauphinais, *supra* note 13, at 55 (noting that "British colonial authorities had a deep-seated fear of lawyers[,] in part because lawyers had led the Indian nationalist movement); Manteaw, *supra* note 13, at 914 (explaining that by discouraging the production of a class of lawyers, colonial governments hoped to discourage the production of a class of politicians that could challenge the colonial government); Ndulo, *Legal Education in Africa*, *supra* note 10, at 489 (arguing that the British discouraged the formation of a trained class of lawyers in Zambia because the "British considered it politically unwise to train African lawyers, fearing that they would turn into agitators for political independence upon their return to the colonies").

almost unheard of before independence.²⁷ In any case, in 1965, the new country established its national university, UNZA, and UNZA's law school started accepting students and gained formal recognition in 1967.²⁸

The following year, the country established the Law Practice Institute, to train law graduates for admission to practice.²⁹ In 1996, the National Assembly reconstituted the Institute as the Zambia Institute of Advanced Legal Education (ZIALE), a corporate body with a mandate similar to that of its predecessor.³⁰ The curriculum at ZIALE involves a full academic year of post-graduate legal study, at the end of which candidates take qualifying exams that determine whether they will be admitted to practice.³¹ Unfortunately, more than forty years after the establishment of UNZA's law school and the Law Practice Institute, the country's community of legal practitioners is insufficient to meet the needs of the Zambian people, and current pass rates at ZIALE hover around ten percent.³² It would be unreasonable to expect a country lacking lawyers to be capable of building the profession to optimal levels in little more than a generation. Nonetheless, policies at the University and at ZIALE have hindered the growth of the profession, and reform could promote the development of a larger, stronger community of Zambian lawyers. I will discuss these issues in greater detail in Sections 4 and 6.

Zambia's independence constitution established a Court of Appeal (called the Supreme Court under the current constitution), with essentially unlimited appellate jurisdiction, and a High Court,

²⁷ By 1960, "there was only one black African lawyer in . . . Tanganyika" (Tanzania), ten in Kenya, and twenty in Uganda. Dauphinais, *supra* note 13, at 55-56.

²⁸ See Ndulo, *Legal Education in Africa*, *supra* note 10, at 491 (explaining the process by which the School of Law at UNZA was created and recognized).

²⁹ *Id.* at 494 n.35.

³⁰ *Historical Background – Zambia Institute of Advanced Legal Education*, ZAMBIA INDEX, <http://www.bwanji.net/zambiaindex.com/listing.php?idu=5013&needle=address&sid=237&page=78&pearid=4992> (last visited Feb. 7, 2012); Interview with Palan Mulonda, Director of ZIALE, in Lusaka, Zambia (Nov. 9, 2010) (on file with author).

³¹ Interview with Palan Mulonda, Director of ZIALE, in Lusaka, Zambia (Nov. 9, 2010) (on file with author).

³² *Id.*

with unlimited original jurisdiction.³³ Additionally, statutes authorized the creation of subordinate courts, overseen by magistrates, and local courts, which administered customary law.³⁴ As under the colonial system, lawyers were not permitted to represent clients in the customary law courts.³⁵ Though the new system abolished the dual framework by which black Africans and whites were subject to entirely different rules, the retention of customary law courts for some issues was a common feature of most post-colonial African nations.³⁶ While native Africans in colonial Rhodesia arguably had little need for lawyers given the primary position of customary law in their daily lives, the sudden transition to a largely Western legal system required the creation of a new cadre of professionals to assist with the system's development and administration and to defend the rights of people in conflict with that system.

Each of Zambia's three constitutions since independence has included provisions for the protection of fundamental rights and individual freedoms, and Part III of the current Constitution contains these terms, many of which are roughly comparable to provisions of the Bill of Rights of the United States Constitution. These terms include protections for expressive behavior,³⁷ protection against unreasonable searches of person and property,³⁸ and protection from government seizure of property without reasonable compensation.³⁹ Crucially, Part III also includes

³³ See Muna B. Ndulo & Robert B. Kent, *The Constitutions of Zambia*, 30 ZAM. L.J. 1, 9 (1998) (describing the judicial structure under the 1964 Independence Constitution).

³⁴ *Id.*

³⁵ See Ndulo, *supra* note 10, at 489-90.

³⁶ See Adam Stapleton, *Introduction and Overview of Legal Aid in Africa*, in ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY 3, 4 (PENAL REFORM INT'L & BLUHM LEGAL CLINIC OF THE NW. UNIV. SCH. OF LAW ed., 2007) ("In most African countries, the formal (state) justice system functions alongside traditional and informal (non-state) justice systems."). "For reasons ranging from history to culture, the average African is today subject to at least two distinct, and sometimes conflicting, legal systems. Customary law usually regulates family and allied relations, while statutory law regulates other aspects of life." Akua Kuenyehia, *Women, Marriage, and Intestate Succession in the Context of Legal Pluralism in Africa*, 40 U.C. DAVIS L. REV. 385, 387 (2006).

³⁷ See CONST. OF ZAMBIA of 1991 (as amended by Act No. 18 of 1996) arts. 19-21 (providing protections for freedom of conscience, freedom of expression, and freedom of assembly and association).

³⁸ *Id.* art. 17.

³⁹ *Id.* art. 16.

safeguards for criminal defendants, guaranteeing a presumption of innocence, compulsory process, and a fair trial, conducted within a reasonable time by an independent, impartial court.⁴⁰ Additionally, Part III guarantees every criminal defendant the right to hire a private lawyer of his choosing or to a legal aid lawyer if granted under the provisions of the Legal Aid Act.⁴¹ Guidelines of the African Commission on Human and Peoples' Rights call for legal aid in cases in which the "interest of justice" requires it,⁴² and most African constitutions, like Zambia's, recognize the right to legal representation, though many specifically disclaim the right to legal aid at public expense, and such assistance generally is not widely available.⁴³

Zambia's Legal Aid Act gives indigent defendants a definitive right to assistance from counsel in all cases before the High Court.⁴⁴ Likewise, any criminal appellant in the Supreme Court will be provided with a legal aid lawyer if he cannot afford to hire a lawyer on his own.⁴⁵ There is no similar guarantee, however, for criminal defendants facing charges in magistrates' courts.⁴⁶ As I will discuss in detail, magistrates' courts oversee most criminal

⁴⁰ See *id.* art. 18 (promulgating rights for defendants charged with criminal offenses).

⁴¹ *Id.* art. 18(2)(d) (providing criminal defendants the right to either retain a private attorney or obtain representation via legal aid in accordance with provisions enacted by Parliament).

⁴² See African Comm'n on Human and Peoples' Rights [ACHPR], *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, § H(a), ACHPR Doc DOC/OS(XXX) (2001) (stating that a criminal defendant or party to a civil case "has a right to have legal assistance assigned to him or her in any case where the interest of justice so require"). This language mirrors language from the International Covenant on Civil and Political Rights, which requires free legal assistance in criminal cases in which the "interests of justice so require." International Covenant on Civil and Political Rights, art. 14(3)(d), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171. The African Charter on Human and Peoples' Rights guarantees a criminal defendant "the right to be defended by counsel of his choice." Banjul Charter on Human and Peoples' Rights, art. 7(1)(c), *opened for signature* June 27, 1981, 21 I.L.M. 58 (entered into force Oct. 21, 1986).

⁴³ See Stapleton, *supra* note 36, at 11-13. While Cameroon, Ghana, Malawi, South Africa, and Sudan have some publicly employed legal aid lawyers, Botswana, the Democratic Republic of Congo, Kenya, Niger, Rwanda, Senegal, Tanzania, and Uganda do not. *Id.* at 12 tbl.2.

⁴⁴ See Legal Aid Act of 1967, Cap. 34, 4 LAWS OF REP. OF ZAMBIA § 9.

⁴⁵ Interview with Anderson Ngulube, *supra* note 3.

⁴⁶ See Legal Aid Act of 1967, Cap. 34, 4 LAWS OF REP. OF ZAMBIA § 8 (failing to include provisions providing indigent parties facing criminal charges before magistrates a guaranteed right to legal counsel).

cases in Zambia, and most of the defendants in those cases are without representation.⁴⁷ In civil cases, the Legal Aid Act gives the Director of the Legal Aid Board, or a court adjudicating a claim, discretion as to whether to grant legal aid to any party.⁴⁸

Despite the guarantees of Part III of the Constitution and similar conditions in previous Zambian constitutions, political and economic realities have frequently reduced those guarantees to little more than aspirational entreaties. Throughout Zambia's post-colonial history, an overbearing executive branch has threatened the independence of the judiciary and compromised the sanctity of fundamental individual rights, and despite promising early developments, Zambia's fledgling democracy quickly morphed into a centralized, authoritarian state.⁴⁹ While the independence constitution provided for presidential appointment of judges with advice from a judicial service commission, the president could appoint the chief justice entirely at his own discretion,⁵⁰ and there was initially no requirement that the National Assembly ratify any of the president's judicial appointments.⁵¹ Moreover, although judges on the Court of Appeal and the High Court could officially be removed only for misbehavior or infirmity, the president could appoint sitting judges to non-judicial government positions, effectively forcing them to resign.⁵² Zambia's first president, Kenneth Kaunda, who remained in power for twenty-seven years, used this technique regularly to remove judges when he disapproved of the opinions they issued.⁵³

By 1972, Kaunda abandoned all pretense of pluralistic democracy, pushing through a new constitution that officially made Zambia a one-party state,⁵⁴ and throughout President

⁴⁷ See Interview with Anderson Ngulube, *supra* note 3.

⁴⁸ See Legal Aid Act of 1967, Cap. 34, 4 LAWS OF REP. OF ZAMBIA §§ 12-13.

⁴⁹ See Ndulo & Kent, *supra* note 33, at 11, 14 (explaining that the government turned Zambia into a one-party state in 1973, and noting ways in which the one-party state undermined the Bill of Rights of the 1964 Constitution and other liberties).

⁵⁰ *Id.* at 9.

⁵¹ See *id.* at 18 (noting that parliamentary approval of a president's judicial appointment was ushered in with the 1991 Constitution).

⁵² *Id.* at 9.

⁵³ *Id.*

⁵⁴ See B.O. NWABUEZE, PRESIDENTIALISM IN COMMONWEALTH AFRICA 222-25 (1974) (discussing President Kaunda's push for Zambia to transition to a one-party state); see also Ndulo & Kent, *supra* note 33, at 11-12 (further detailing the conditions leading to Zambia's transition to a one-party state).

Kaunda's rule, he kept the country in an official state of emergency, which he used to justify regular detentions without trials as a means of intimidating opponents of the government.⁵⁵ After the reintroduction of multi-party politics under the Third Republican Constitution in 1991, President Frederick Chiluba continued to declare states of emergency periodically to support similar detentions.⁵⁶ Even under Zambia's current constitution, the president retains significant control over the judiciary. Although the National Assembly must now ratify appointments to the Supreme Court and to the High Court,⁵⁷ the president can remove Supreme Court judges at his discretion as long as the initial appointment is for a limited term.⁵⁸ Additionally, the president can have High Court judges removed with the creation of ad hoc tribunals, composed of as few as three members of his choosing.⁵⁹ Presidential prerogative to remove judges has the potential to significantly compromise the independence of the Zambian judiciary.

Executive dominance has been typical of post-colonial African states.⁶⁰ To some extent, this scenario may have been an inevitable consequence of the examples highly centralized, authoritarian colonial regimes set for their independent successors.⁶¹ In any

⁵⁵ See Ndulo & Kent, *supra* note 33, at 10 (noting frequent instances of requests for judicial review in "cases involving detention without trial, that is detentions on the basis of an executively declared state of emergency").

⁵⁶ See Isabel Apawo Phiri, *President Frederick J.T. Chiluba of Zambia: The Christian Nation and Democracy*, 33 J. RELIGION AFR. 401, 412 (2003); see also H. Kwasi Prempeh, *Presidential Power in Comparative Perspective: The Puzzling Persistence of Imperial Presidency in Post-Authoritarian Africa*, 35 HASTINGS CONST. L.Q. 761, 762 (2003).

⁵⁷ See CONST. OF ZAMBIA of 1991 (as amended by Act No. 18 of 1996) arts. 93, 95 (requiring that the National Assembly confirm the Zambian president's judicial appointments to the Supreme Court and High Court).

⁵⁸ See *id.* art. 96.

⁵⁹ *Id.* art. 98(3).

⁶⁰ See generally Muna Ndulo, *Presidentialism in Southern African States and Constitutional Restraint on Presidential Power*, 26 VT. L. REV. 769 (2002) (analyzing generally the prevalence of disproportionately powerful executive branches in southern African nations); NWABUEZE, *supra* note 54 (exploring themes pertaining to the role of the executive branch in African states, including its high level of dominance compared to other political branches).

⁶¹ The new African regimes inherited "the full panoply of colonial legislation, orders, ordinances, by-laws, and judicial precedents—upon which colonial authority had been based." H. Kwasi Prempeh, *Marbury in Africa: Judicial Review and the Challenge of Constitutionalism in Contemporary Africa*, 80 TUL. L. REV. 1239, 1265 (2006). Ultimately, it was "the inherited (subconstitutional) legal order, not

case, regular disregard for individual rights has accompanied executive supremacy in Zambia, as in other African states. In some measure, this state of affairs may result from the tendency of traditional African societies to elevate community well-being above personal rights.⁶² In fact, the primacy of collective welfare was at the heart of President Kaunda's conception of a humanist society.⁶³ As in other African nations, this paradigm required a rejection of "rugged individualism" as "the primacy of the whole is emphasized,"⁶⁴ and, especially in the early years of independence, African leaders often justified suppression of individual rights with reference to the collective imperative of economic development.⁶⁵

Poverty has been at least as significant an obstacle as politics to enforcement of basic human rights in Zambia. Zambia remains one of the world's poorest countries, with a life expectancy of forty-five years,⁶⁶ sixty-four percent of the population below the poverty line,⁶⁷ and one of the highest unemployment rates in the

the new constitutions, [that] 'offered African elites real power and the bureaucratic machinery with which to exercise it effectively.'" *Id.* at 1266 (quoting H.W.O. Okoth-Ogendo, *Constitutions Without Constitutionalism: Reflections on an African Political Paradox*, in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 71 (Douglas Greenberg et al. eds., 1993)).

⁶² See Chuma Himonga, *State and Individual Perspectives of a Mixed Legal System in Southern African Contexts with Special Reference to Personal Law*, 25 TUL. EUR. & CIV. L.F. 23, 29 (2010); Jeanne M. Woods, *Rights as Slogans: A Theory of Human Rights Based on African Humanism*, 17 NAT'L BLACK L.J. 52, 55-57 (2003).

⁶³ See Woods, *supra* note 62, at 56 (relaying President Kaunda's description of tribal community as a mutual society that is organized to satisfy all of its members' basic human needs).

⁶⁴ *Id.*

⁶⁵ As described by H. Kwasi Prempeh, the ideology of development came to be a wholesale justification for the continuation of the authoritarian aspects of colonial regimes and the subversion of rights-based constitutionalism. Prempeh, *supra* note 61, at 1266-68. Writing in 1974, B.O. Nwabueze discussed how the development rationale had been used to suppress individual rights and freedoms and to diminish judicial power, while enhancing the authority of political leaders. NWABUEZE, *supra* note 54, at 354.

⁶⁶ *Data by Country: Zambia*, THE WORLD BANK, <http://data.worldbank.org/country/zambia> (last visited Feb. 13, 2012) (providing data regarding life expectancy in Zambia as of 2006).

⁶⁷ *The World Factbook: Zambia*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/za.html> (last updated Nov. 10, 2011) (providing the percent of Zambian citizens below the poverty in 2006).

world.⁶⁸ Africa's AIDS pandemic compounds Zambian poverty, and over fourteen percent of the Zambian population is currently HIV positive.⁶⁹ As a consequence of Zambia's poverty, widespread government corruption continues to plague the country. Low salaries have exacerbated this problem amongst the country's police force, which has been known to require bribes to commence investigations, to extort money from victims of crimes, and to accept bribes from suspects in exchange for their release from custody.⁷⁰ Similarly, judicial corruption has inhibited the development of a truly independent judiciary.⁷¹ Moreover, the lack of adequate judicial resources, including insufficient numbers of trained personnel, has contributed to prolonged pre-trial detentions, with some defendants waiting for years for trials.⁷² Adding to this problem, prison officials regularly alter documents to suggest prisoners have had court hearings when they have not, often because the prisons lack the money to buy fuel to transport prisoners to court.⁷³

Meanwhile, human rights abuses by Zambian law enforcement are common. Police frequently torture people in custody to coerce confessions, and reports of recent abuses have included beatings with metal bars and electrified rods and the hanging of prisoners upside down to torture them.⁷⁴ Additionally, police have, on occasion, demanded sex from female detainees in exchange for their release and have raped female prisoners.⁷⁵ The police officers

⁶⁸ See *id.* (ranking Zambia number 142 out of 199 in a list of countries arranged from the lowest to the highest unemployment rate).

⁶⁹ *Background Note: Zambia*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/r/pa/ei/bgn/2359.htm> (last updated Oct. 17, 2011).

⁷⁰ See U.S. DEPARTMENT OF STATE, *Country Reports on Human Rights Practices: Zambia* (Mar. 11, 2010), available at <http://www.unhcr.org/refworld/publisher,USDOS,,ZMB,4b9e52a8c,0.html> [hereinafter *Zambia 2009*] (discussing Zambia's human rights record).

⁷¹ See *id.*

⁷² See *id.*

⁷³ See *id.*

⁷⁴ See *Zambia: Police Brutality, Torture Rife*, HUMAN RIGHTS WATCH (Sept. 7, 2010), <http://www.hrw.org/news/2010/09/03/zambia-police-brutality-torture-rife> (arguing that these incidents should be investigated and that the perpetrators should be held accountable).

⁷⁵ *Id.*; see, e.g., Moses Kuwema, *Sichilima Warns Policemen Sleeping with Detainees*, THE POST, Nov. 15, 2010, http://www.postzambia.com/post-read_article.php?articleId=15684 (noting the reports of police officers demanding intercourse from females arrested for loitering).

who have committed these crimes have done so largely with impunity.⁷⁶

Overall, conditions for those in prison in Zambia are horrendous. Prison buildings house several times the number of inmates they were built to hold, and cells are often so crowded that lack of floor space forces prisoners to sleep in shifts.⁷⁷ This overcrowding is largely attributable to the high percentage of remand prisoners awaiting trial without bail, and similar overcrowding plagues prisons across the continent, often because remand prisoners who cannot afford to pay sureties to secure pre-trial release end up waiting for years before their trials begin.⁷⁸ In Zambia, inmates in solitary confinement are regularly stripped naked and placed in windowless cells filled up to their calves with water contaminated with their own feces.⁷⁹ Understaffing at the prisons leads guards to delegate authority to prisoners, designated as "cell captains," who enforce their own crude justice on the population of inmates.⁸⁰ Outbreaks of tuberculosis turn the prison complexes into literal death traps.⁸¹ These sorts of devastating prison conditions are common in many other African countries as well.⁸²

Given threats to the independence of the judiciary, a history of human rights abuses, and devastating resource scarcity, access to qualified lawyers is crucially important to Zambians dealing with

⁷⁶ *Zambia 2009*, *supra* note 70.

⁷⁷ See Celia W. Dugger, *Report Calls Zambia's Prisons 'Death Traps'*, N.Y. TIMES, Apr. 27, 2010, <http://www.nytimes.com/2010/04/28/world/africa/28zambia.html>.

⁷⁸ See Stapleton, *supra* note 36, at 8-10 (describing similar conditions in Benin, Burundi, Ghana, Kenya, Madagascar, Malawi, and Nigeria).

⁷⁹ Dugger, *supra* note 77; *Zambia: Police Brutality, Torture Rife*, *supra* note 74 (providing selected accounts from Zambian prisoners about treatment they experienced in police custody).

⁸⁰ Dugger, *supra* note 77.

⁸¹ *Id.*

⁸² In 1996, representatives from forty African countries and seven other countries promulgated the Kampala Declaration, recognizing widespread inhumane conditions in African prisons, largely as a result of overcrowding. PENAL REFORM INT'L, *Kampala Declaration on Prison Conditions in Africa and Plan of Action*, Sept. 19-Sept. 21, 1996, available at <http://www.penalreform.org/files/rep-1996-kampala-declaration-en.pdf>; see also Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, pmbl. (Nov. 22-24, 2004), available at <http://www.penalreform.org/files/rep-2004-lilongwe-declaration-en.pdf> (identifying the poor conditions of prisons in African nations).

legal conflict, and especially to those engaged in adversarial proceedings against the government. Yet, as discussed throughout this Article, most Zambians do not have meaningful access to legal representation, and the vast majority of criminal defendants in Zambia do not have lawyers. With only one lawyer for every 18,000 people in Zambia, it would be impossible, under the best of circumstances, to provide for the country's legal needs. In the United States, there is about one lawyer for every 260 people,⁸³ and in many countries in Europe, the ratios are similarly high.⁸⁴ Throughout Africa, however, the numbers of practicing lawyers are strikingly low. Table 1, on the following page, illustrates the problem.

This is not to suggest that African countries necessarily require lawyers in numbers proportionate to the world's most developed economies. Yet the numbers across Africa are clearly insufficient. As in Zambia, lawyers in most sub-Saharan countries concentrate heavily in urban centers, leaving large portions of the population with geographical, as well as financial, barriers to legal representation.⁸⁵ Moreover, even in urban areas, many criminal defendants do not have lawyers,⁸⁶ and most people with civil claims cannot afford the costs of representation or litigation.⁸⁷ Increasing the size of the African bar would help to address these problems.

⁸³ According to the American Bar Association, there were 1,180,386 active lawyers in the United States in 2009. *Total National Lawyer Counts 1878–2011*, ABA http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/total_national_lawyer_counts_18782011_1.xls (last visited Feb. 14, 2012). In the same year, the population of the United States was approximately 305,500,000. See *U.S. Population, 2009: 305 Million and Counting*, U.S. NEWS & WORLD REP., Dec. 31, 2008 <http://www.usnews.com/opinion/articles/2008/12/31/us-population-2009-305-million-and-counting>.

⁸⁴ See COUNCIL OF BARS AND LAW SOCIETIES OF EUR., *Number of Lawyers in CCBE Member Bars*, available at http://www.ccbe.org/fileadmin/user_upload/NTCdocument/table_number_lawyers1_1179905628.pdf (last updated in 2006) (breaking down the demographics of lawyers who are members of a bar or registered).

⁸⁵ See Stapleton, *supra* note 36, at 13 (discussing barriers to legal representation in sub-Saharan Africa).

⁸⁶ *Id.*

⁸⁷ See African Commission on Human and Peoples' Rights, *Dakar Declaration and Recommendations*, §9 (1999), <http://www.chr.up.ac.za/index.php/documents-by-theme/fair-trial.html> (stating that governments should provide legal assistance to indigent persons to make the right of a fair trial more effective).

TABLE 1

Country	Number of Lawyers	Population	Ratio of Lawyers to People
Botswana ⁸⁸	190	1,600,000	1:8,421
Cameroon ⁸⁹	1,248	17,000,000	1:13,622
Democratic Republic of Congo ⁹⁰	3,000	60,000,000	1:20,000
Ethiopia ⁹¹	434	67,000,000	1:154,378
The Gambia	130 ⁹²	1,705,212 ⁹³	1:13,117
Ghana	2,500 ⁹⁴	23,837,261 ⁹⁵	1:9,535
Kenya	7,000 ⁹⁶	39,802,015 ⁹⁷	1:5,686
Malawi ⁹⁸	350	12,000,000	1:34,286
Niger ⁹⁹	77	11,000,000	1:142,857

⁸⁸ The figures in this row were current as of 2007. Stapleton, *supra* note 36, at 12.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² GAMBIA BAR ASSOCIATION, <http://www.accessgambia.com/extra/gambia-bar-association.html> (last visited Feb. 14, 2012). However, 40 to 50 of these lawyers are working outside of Gambia. *Id.*

⁹³ *Data by Country: Gambia*, WORLD BANK, <http://web.archive.org/web/20101202092922/http://data.worldbank.org/country/gambia> (last visited Feb. 14, 2012) (accessed by searching internet url on Internet Archive) (archival copy on file with the University of Pennsylvania Journal of International Law).

⁹⁴ *Training of Ghanaian Lawyers*, GHANA BAR ASSOCIATION, <http://www.ghanabar.org/about-us/training-ghanaian-lawyers.html> (last visited Feb. 14, 2012).

⁹⁵ *Data by Country: Ghana*, WORLD BANK, <http://web.archive.org/web/20101202154035/http://data.worldbank.org/country/ghana> (last visited Feb. 14, 2012) (accessed by searching internet url on Internet Archive) (archival copy on file with the University of Pennsylvania Journal of International Law).

⁹⁶ See *Members Overview*, THE LAW SOCIETY OF KENYA, <http://web.archive.org/web/20101019040643/http://www.lsk.or.ke/about-lsk/overview/> (last visited Feb. 14, 2012) (accessed by searching internet url on Internet Archive) (archival copy on file with the University of Pennsylvania Journal of International Law).

⁹⁷ *Data by Country: Kenya*, WORLD BANK, <http://web.archive.org/web/20101202154852/http://data.worldbank.org/country/kenya> (last visited Feb. 14, 2012) (accessed by searching internet url on Internet Archive) (archival copy on file with the University of Pennsylvania Journal of International Law).

⁹⁸ Stapleton, *supra* note 36, at 12.

TABLE 1 (CONTINUED)

Country	Number of Lawyers	Population	Ratio of Lawyers to People
Nigeria	55,000 ¹⁰⁰	154,728,892 ¹⁰¹	1:2,813
Rwanda ¹⁰²	420	8,000,000	1:19,048
Senegal ¹⁰³	300	10,000,000	1:33,333
Sudan ¹⁰⁴	2,000	33,000,000	1:16,500
Tanzania	1,188 ¹⁰⁵	43,739,051 ¹⁰⁶	1:36,834
Uganda	1,200 ¹⁰⁷	32,709,865 ¹⁰⁸	1:27,258

In Zambia, the growth of the legal profession has been distressingly slow. Between 2005, the first year for which the Law Association of Zambia has existing records, and December of 2010, the private bar in Zambia increased by only 153 lawyers, from 578

⁹⁹ *Id.*

¹⁰⁰ *About NBA*, NIGERIAN BAR ASSOCIATION, http://web.archive.org/web/20100904024624/http://www.nigerianbar.org/index.php?option=com_content&task=view&id=1&Itemid=6 (last visited Feb. 14, 2012) (accessed by searching internet url on Internet Archive) (archival copy on file with the University of Pennsylvania Journal of International Law).

¹⁰¹ *Data by Country: Nigeria*, WORLD BANK, <http://web.archive.org/web/20101202160324/http://data.worldbank.org/country/nigeria> (last visited Feb. 14, 2012) (accessed by searching internet url on Internet Archive) (archival copy on file with the University of Pennsylvania Journal of International Law).

¹⁰² Stapleton, *supra* note 36, at 12.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *See Roll of Advocates*, TANGANYIKA LAW SOCIETY, <http://www.tls.or.tz/pdf/rolls.pdf> (showing the names and dates of admission of advocates into the Society).

¹⁰⁶ *Data by Country – Tanzania*, WORLD BANK, <http://web.archive.org/web/20101202161926/http://data.worldbank.org/country/tanzania> (last visited Feb. 11, 2012) (accessed by searching internet url on Internet Archive) (archival copy on file with the University of Pennsylvania Journal of International Law).

¹⁰⁷ *See UGANDA LAW SOCIETY, ANNUAL REPORTS AND ACCOUNTS 2010 10 (2010) available at* <http://www.uls.or.ug/uploads/ULS%20ANNUAL%20REPORT%202009-2010.pdf> (stating the number of paid members of the Uganda Law Society who are registered lawyers).

¹⁰⁸ *Data by Country – Uganda*, WORLD BANK, <http://web.archive.org/web/20101202162306/http://data.worldbank.org/country/uganda> (last visited Feb. 11, 2012) (accessed by searching internet url on Internet Archive) (archival copy on file with the University of Pennsylvania Journal of International Law).

to 731.¹⁰⁹ Yet in that same period, UNZA's school of law has graduated between eighty and one hundred students per year.¹¹⁰ High failure rates at ZIALE largely account for this disparity.

Compounding the detrimental effects of the scarcity of Zambian lawyers, the Legal Practitioners Act prevents many people who might otherwise be able to obtain civil legal services from doing so by prohibiting the use of contingency fees.¹¹¹ Without that possibility, and with many Zambian lawyers charging hundreds of dollars an hour, their services are unattainable for the great majority of Zambians. Furthermore, with only twenty-four lawyers at the Legal Aid Board and tens of thousands of new criminal cases entered in magistrates' courts each year, the plight of Zambian criminal defendants is dire. In a promising development, 131 private practitioners have signed up with the Law Association of Zambia's Legal Aid Committee to participate in a program to take referrals of High Court criminal cases from the Legal Aid Board.¹¹² Nonetheless, this program began operating only in mid-2010, and it is still too early to determine the extent of its impact.¹¹³

Meanwhile, only a small handful of private, non-profit organizations offer direct in-court legal representation.¹¹⁴ Two of

¹⁰⁹ Figures available at the Law Association of Zambia offices, viewed on December 6, 2010.

¹¹⁰ Interview with Anne Chanda, Acting Dean of the University of Zambia School of Law, in Lusaka, Zambia (Sept. 28, 2010) (on file with author).

¹¹¹ See Legal Practitioners Act, *The Legal Practitioners' Practice Rules*, §8 (2002), available at http://www.laz.org.zm/legal_prac_act.htm (stating that a practitioner retained to prosecute or defend an action cannot arrange to receive a contingency fee for that proceeding).

¹¹² Interview with Edward Sakala, *supra* note 7.

¹¹³ *Id.*; Interview with Likando Kalaluka, Convener of the Law Association of Zambia Legal Aid Committee, in Lusaka, Zambia (Sept. 21, 2010) (on file with author).

¹¹⁴ See generally Paralegal Alliance Network, University of Zambia School of Law, & Danish Institute for Human Rights, *Mapping of Legal Aid Service Providers in Zambia* (Feb. 6, 2008) (unpublished report, on file with author). Much of the material in Section 6 below is based on information gathered during an exercise to map legal aid services in Zambia, conducted in late 2007 by the University of Zambia School of Law, the Paralegal Alliance Network, and the Danish Institute for Human Rights. As a lecturer at the University of Zambia School of Law in 2007, I participated in the mapping exercise by facilitating interviews and survey distribution in Northwestern Province and Copperbelt Province. The project was funded by Deutsch Gesellschaft für Technische Zusammenarbeit (the German government's international development program), the Royal Danish Embassy to Zambia, and the Royal Swedish Embassy

those, the Legal Resources Foundation and the National Legal Aid Clinic for Women, have largely ceased their operations as donor fatigue has led to funding crises.¹¹⁵ A third, the International Justice Mission, provides civil assistance, primarily in land grabbing cases.¹¹⁶ A number of organizations use paralegals, usually retained as volunteers, to conduct sensitization programs to educate communities on their rights and to offer particularized legal advice to individual clients. Nonetheless, these organizations lack adequate funding for human or material resources, and most paralegals have no supervision from lawyers.¹¹⁷

Despite these limitations, there is much potential for progress. While some of the problems with the country's justice system are intractably linked to Zambia's extreme dearth of resources, Zambia could provide better access to legal representation through a series of achievable policy reforms. In the next section, I will examine in detail the operations of Zambia's westernized courts, with a focus on the adequacy of legal representation for criminal defendants. Defendants in these courts receive some assistance from legal aid lawyers and from the private bar. Nonetheless, most are not represented, and the consequences are dire.

3. ZAMBIA'S WESTERN COURT SYSTEM

Though the High Court automatically refers unrepresented criminal defendants to the Legal Aid Board, subordinate courts, presided over by magistrates, oversee most criminal cases in Zambia, and the great majority of defendants in those cases go unrepresented. And while magistrates' courts regularly sentence defendants to years in prison with hard labor, indigent criminal defendants have no definitive right to a lawyer in those courts. As a result, the Legal Aid Board often has to make difficult decisions about which applications from subordinate court defendants it can accept.¹¹⁸ The Board makes those decisions based on a

to Zambia. The project led to the compilation of a final report, completed in February 2008, cited above.

¹¹⁵ Interview with Edward Sakala, *supra* note 7.

¹¹⁶ *Id.*

¹¹⁷ Paralegal Alliance Network, University of Zambia School of Law, & Danish Institute for Human Rights, *supra* note 114, at 30.

¹¹⁸ Interview with Anderson Ngulube, *supra* note 3 ("With subordinate court cases, that is where we have to decide which cases really, really need to be placed with us.").

combination of the defendant's financial need and the complexity and seriousness of the case.¹¹⁹ Furthermore, most defendants in magistrates' courts are likely unaware that applying for legal aid is even an option, and magistrates and prosecutors rarely advise defendants to seek counsel or to apply for legal aid.¹²⁰ Asked what he would do with unlimited resources, Mr. Ngulube, the Acting Director of the Legal Aid Board, said, "If I had the choice, I would put more lawyers in Subordinate Court."¹²¹

Statistics available from the High Court's central registry and from the Legal Aid Board reveal the severity of the problem. In 2009, magistrates' courts in Zambia took pleas in more than 23,697 new criminal cases.¹²² Meanwhile, available data on new criminal cases, including appeals, in the High Court show that the Court dealt with only a small fraction of the criminal caseload of the magistrates' courts in the same year.¹²³ The recent commencement of operations of the Law Association of Zambia's Legal Aid Committee may significantly ease the Legal Aid Board's burden with regard to High Court cases. In fact, 131 private practitioners, close to a fifth of Zambia's private bar, have signed up to participate in the program.¹²⁴ Participating lawyers will earn about \$900 from a government-sponsored legal aid fund for each case they handle through the Committee. While it is still too early to determine the impact of the Committee, and while the payment structure may encourage speedy disposition of cases rather than high-quality representation,¹²⁵ this LAZ initiative could

¹¹⁹ *Id.*

¹²⁰ *Id.*; see also Interview with Alice Sitali, in Lusaka, Zambia (Sept. 20, 2010) (on file with author) ("You'll find that the prosecutor is sometimes acting as prosecutor and also counseling the defendants, but just advising the defendant to plead guilty.").

¹²¹ Interview with Anderson Ngulube, *supra* note 3.

¹²² Data collected from the High Court registry on Oct. 27 and Oct. 28, 2010. The registry had data for eight of Zambia's nine provinces. However, there was no information available for Southern Province. Additionally, statistics were missing for the Mumbwa Subordinate Court in Central Province.

¹²³ The High Court registry revealed a total of 1137 new cases in the High Court, including appeals from subordinate courts, in 2009. This information also did not include any cases from Southern Province.

¹²⁴ Interview with Edward Sakala, *supra* note 7.

¹²⁵ Lawyers who accept cases through the Legal Aid Committee receive 2 million kwacha upon initiating representation and another 2 million kwacha once the case is complete. This secondary payment, which does not depend on the outcome of the case, may provide lawyers with incentives to dispense with cases quickly rather than to represent clients to the best of their abilities.

significantly improve the quality of representation of criminal defendants in the High Court.

Even so, the Legal Aid Committee takes only High Court cases,¹²⁶ and, with only twenty-four lawyers, the overworked and understaffed Legal Aid Board cannot possibly expect to effectively represent the huge numbers of criminal defendants facing charges each year in magistrates' courts. In fact, the Legal Aid Board's various offices took, at most, 302 criminal cases from magistrates' courts in 2009.¹²⁷ Overall, the Board took between 2492 and 2678 cases in 2009, including all civil and criminal cases in all courts, and any assistance the Legal Aid Committee offers to lighten this load will be insufficient to provide for the possibility of representation for the majority of people facing criminal charges across the country, especially in magistrates' courts.¹²⁸

Yet it is clear that defendants confronting charges in Zambian magistrates' courts face critical threats to their most fundamental rights. An examination of case data from Lusaka District is revealing. First, scrutiny of the plea books for six of fourteen magistrates in the district for the first six months of 2009 provided information on 765 cases.¹²⁹ Of those, 558 cases had reached their

¹²⁶ Interview with Likando Kalaluka, *supra* note 113.

¹²⁷ The Legal Aid Board's central registry indicates that the Board accepted a total of 246 criminal cases in magistrates' courts for all the Board's offices other than Mansa in 2009. The Ndola office took seven criminal cases from magistrates' courts, the Kitwe office accepted forty-nine, the Lusaka office accepted eighty-nine; the Livingstone office accepted forty-two; the Chipata office accepted fifteen; the Solwezi office took forty-one; and the Kabwe office accepted three. Records from Mansa show that the office received applications for representation in fifty-six criminal cases in magistrates' courts in 2009, but the records do not show how many of those cases the Mansa office accepted.

¹²⁸ The Legal Aid Board's central registry shows the Ndola office accepted 173 criminal cases from all courts in 2009 and 26 civil cases; the Kitwe office accepted 259 criminal cases and 88 civil cases; the Lusaka office accepted 834 criminal cases and 86 civil cases; the Livingstone office accepted 290 criminal cases and 37 civil cases; the Chipata office accepted 288 criminal cases and 34 civil cases; the Solwezi office accepted 123 criminal cases and 38 civil cases; the Kabwe office accepted 160 criminal cases and 6 civil cases; Mansa received 175 applications for criminal representation and eleven applications for civil representation, but the records do not reveal how many of those cases the Mansa office accepted.

¹²⁹ This included 80 cases before the Honorable A.M. Chulu; 243 cases before the Honorable Hamaundu; 120 cases before the Honorable W. Banda; 150 cases before the Honorable K. Mulife; 72 cases before the Honorable M. Makalile; and 100 cases before the Honorable Chilembo. Plea books for the remaining eight magistrates in the district were either filled in sporadically, making it impossible to rely on the data, or were unavailable after repeated attempts to access them through marshals employed to assist the magistrates and to keep records.

conclusion in magistrates' courts by late September 2010.¹³⁰ In 290 of those 558 cases, defendants received prison sentences or were sent to juvenile detention centers,¹³¹ and 241 of the cases involved sentences of prison time with hard labor.¹³² One hundred twenty-four of the cases included sentences of one year or more of prison time.¹³³

Assessment of active case files is also revealing. Examination in late September 2010 of the active files for ten of the fourteen magistrates in Lusaka district, including 717 cases, shows that defendants took their initial pleas in eighty-five percent of these cases in 2009 or 2010. Nonetheless, a significant minority of cases have languished much longer. Approximately eight percent of active cases for the ten magistrates began in 2007 or earlier, and sixteen of the cases began at least five calendar years before the date of inspection. Additionally, none of these data accounts for remand prisoners who may have spent considerable periods of time in prison before magistrates took their initial pleas.

Perhaps ironically, cases in magistrates' courts may take longer for those defendants lucky enough to obtain the services of the Legal Aid Board. Of the 302 magistrates' court criminal cases the board accepted in 2009, only sixty-seven cases were complete by the end of the year. In some districts, the figures were particularly striking. For example, of the eighty-nine criminal cases the Legal Aid Board accepted in 2009 from Lusaka District magistrates' courts, the government withdrew the charges in one case, and none of the remaining eighty-eight cases were complete by the end of 2009. This trend may, however, be unsurprising. Motions by

¹³⁰ This figure included 46 of eighty cases begun in Honorable Chulu's court in the first half of 2009; 214 of 243 cases in Honorable Hamaundu's court; 79 of 120 cases in Honorable Banda's court; 102 of 150 in Honorable Mulife's court; 50 of 72 in Honorable Makalile's court; and 67 of 100 cases in Honorable Chilembo's court.

¹³¹ This figure included 16 of the 46 cases completed in Honorable Chulu's court; 115 of 214 in Honorable Hamaundu's court; 52 of 79 in Honorable Banda's court; 56 of 102 in Honorable Mulife's court; 16 of 50 in Honorable Makalile's court; and 35 of 67 in Honorable Chilembo's court.

¹³² This figure included 12 of the 46 cases completed in Honorable Chulu's court; 104 of 214 in Honorable Hamaundu's court; 37 of 79 in Honorable Banda's court; 50 of 102 in Honorable Mulife's court; 10 of 50 in Honorable Makalile's court; and 28 of 67 in Honorable Chilembo's court.

¹³³ This figure included 10 of the 46 cases completed in Honorable Chulu's court; 58 of 214 in Honorable Hamaundu's court; 4 of 79 in Honorable Banda's court; 28 of 102 in Honorable Mulife's court; 6 of 50 in Honorable Makalile's court; and 18 of 67 in Honorable Chilembo's court.

represented clients may slow the procession of a case, and the Legal Aid Board tends to accept cases in magistrates' courts only for relatively serious and complex matters.¹³⁴ In any case, defendants who are able to attract the attention of the Legal Aid Board are certainly better off with lawyers than without; the average criminal defendant in Zambian courts has little education and little concept of his legal rights or how to navigate the court system. As significant as any other benefit a lawyer may confer, lawyers may be more likely to be able to obtain bail than unrepresented criminal defendants.

For those without lawyers, seeking bail can be difficult, for magistrates have broad discretion to deny bail, even for non-violent offenders and without any obligation to articulate reasons for that denial.¹³⁵ Ultimately, Likando Kalaluka, the Convener of the Law Association's Legal Aid Committee, attributes the high percentage of Zambian prisoners who have not had trials to this unfettered discretion, in addition to the lack of legal representation for most defendants in magistrates' courts.¹³⁶ Such discretion is particularly troubling in light of the lack of professional training of most Zambian magistrates, over seventy percent of whom are not qualified as lawyers.¹³⁷ For now, in any case, defendants in magistrates' courts are unlikely to be lucky enough to attract the attention of the Legal Aid Board and unlikely to be able to afford private representation. Any serious attempt to improve access to justice in Zambia must include measures to reduce the number of people sentenced to years of imprisonment without the benefit of legal representation.

Zambians with civil claims are equally unlikely to be able to afford lawyers. With high hourly rates as the general norm, most Zambians have no choice but to act as their own advocates or to forgo pursuing litigation as a means of enforcing their rights. A significant minority of the Legal Aid Board's caseload is civil, and

¹³⁴ Interview with Anderson Ngulube, *supra* note 3.

¹³⁵ Interview with Likando Kalaluka, *supra* note 113.

¹³⁶ *Id.* ("We should have it mandatory that anytime someone appears in court on a bailable offense, the court should grant bail unless the state has a specific reason why bail should not be granted."). But, citing the shortage of Zambian lawyers, Mr. Kalaluka said that he does not believe it is currently feasible to provide most criminal defendants with lawyers.

¹³⁷ Zambia, 2009, *supra* note 70 (describing how at the end of 2009, only 41 of 150 Zambian magistrates were qualified as lawyers, and the rest were lay magistrates).

in 2009, the Board accepted between 365 and 376 civil cases across the country,¹³⁸ most of which involved disputes over land.¹³⁹ Similarly, the International Justice Mission handles some land claims for Zambians who cannot afford to hire their own lawyers.¹⁴⁰ However, these avenues for obtaining legal assistance are available to only an extreme minority of Zambians with credible civil claims. There is no reasonable prospect of that changing while the country's prohibition on contingency fees remains intact and without dramatic growth in the population of Zambian lawyers. In Section 7 of this Article, I will suggest potential measures to increase the availability of legal representation, including strategies for growing the Zambian legal profession and possibilities for improving the availability of legal assistance given the current dearth of lawyers. In the next section of the Article, I will examine the causes for the current paucity of Zambian lawyers.

4. CAUSES OF THE SCARCITY OF ZAMBIAN LAWYERS

With no Zambian lawyers at the time of independence, the task of developing the country's legal profession would be daunting under the best of circumstances. Almost overnight, Zambians faced a transition from a system in which customary legal principles governed almost all of their affairs to one in which Western-style courts were intended to oversee most major disputes both between individuals and between individuals and the state. Because colonial policies had largely excluded native Africans from engaging with British law and from accessing legal education, the new nation would have to build its legal profession from whole cloth. In 1964, as Zambia was establishing its new

¹³⁸ See *supra* text accompanying note 128. In addition to Zambia, South Africa provides legal aid in some civil cases. See also Brian Brophy, *A Civil Right to Counsel Through the States Using California's Efficiency Project as a Model Toward a Civil Gideon*, 8 HASTINGS RACE & POVERTY L.J. 39, 41 (2011). The Lilongwe Declaration, with input from delegates of twenty-one African countries, also contemplates the use of civil legal aid. See PENAL REFORM INT'L, *supra* note 82. Additionally, the African Commission on Human and Peoples' Rights urges the provision of civil legal aid in cases in which the "interest of justice" requires it. See African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, § H(a)-(b), Doc/OS(XXX)247 (2001).

¹³⁹ Interview with Anderson Ngulube, *supra* note 3.

¹⁴⁰ Interview with Edward Sakala, *supra* note 7.

legal order, the country had no university, let alone a law school, and huge investments in educational infrastructure would be necessary to begin the difficult work ahead. Close to fifty years after independence, an analysis of obstacles to growth of the Zambian legal profession must still include a heavy focus on legal education.

In the first part of this section, I will discuss the state of the Zambian legal academy. Resource limitations and poor policy choices in that academy have hindered the admission of new lawyers to the Zambian bar. Meanwhile, around ninety percent of each new class at ZIALE has failed the bar admissions course in recent years.¹⁴¹ Problems with the organization and administration of ZIALE have also likely suppressed growth of the Zambian legal profession. I will discuss these issues in the second part of this section.

4.1. Legal Education in Zambia

4.1.1. State of the Zambian Legal Academy

As mentioned above, Zambia established its national university, UNZA, in 1965 and the UNZA School of Law in 1967. Until 2005, the School of Law remained the country's only law school, and until late 2010, it was the only school in the country from which ZIALE would accept candidates for the bar.¹⁴² Thus, discussion of the Zambian legal academy necessarily entails a heavy focus on the UNZA School of Law. Interviews with local lawyers and with the Acting Dean of the School of Law revealed a common belief that legal educators in Zambia have failed, at least in some respects, to adequately prepare law students for entrance into the profession.¹⁴³ Deeper examination of the Zambian legal

¹⁴¹ Interview with Palan Mulonda, *supra* note 30.

¹⁴² ZIALE refused to grant admission to students from Zambian universities other than UNZA until the High Court ordered the Institute to do so. Although the High Court ruled that ZIALE must begin admitting students from Zambia Open University in mid-2009, students from Zambia's newer law schools did not begin matriculating until September 2010. *Id.*; *Zambia Open University Law Students Win Major Legal Battle*, TIMES ZAMBIA, July 2, 2009, at 4, available at NewsBank, inc., Record No. TOZA72497950.

¹⁴³ Interview with Anne Chanda, *supra* note 110. When asked about the cause of high failure rates at ZIALE, Mr. Ngulube, Mrs. Sitali, and Mr. Kalaluka each separately noted that they perceived a decline in the quality of legal education in Zambia. See also Interview with Likando Kalaluka, *supra* note 113;

academy confirms that popular conception. Nonetheless, staggering economic challenges have undeniably contributed to and compounded the problem.

At the time of the founding of the UNZA School of Law in 1967, the University Senate set out broad and ambitious goals for the new school. According to the law school's 1970 handbook, the objectives of the school were to provide Zambia with lawyers with skills at least equal to the best lawyers from abroad, but better suited to the needs of a developing country like Zambia; to help develop and build the legal system of the newly independent country; and to make the school's staff and students generally available to improve community welfare.¹⁴⁴ Forty years later, the school has fallen short of these lofty ideals.

The reasons for this failure are numerous, though much of the problem is traceable to the unavailability of public resources for tertiary education in Zambia. Specifically, the law school is dramatically understaffed, faces chronic absenteeism from some faculty members, and has a dire shortage of books and other educational materials. Moreover, frequent strikes by University faculty shut the school down, sometimes for weeks at a time.¹⁴⁵ Although a lack of adequate funding inevitably makes efficient operation a struggle, the School might resolve some of its problems through pedagogical innovation and policy reforms to enhance the impact of the School's faculty.

Perhaps the most serious problem the University of Zambia's law school faces is a faculty shortage. While the School has an official establishment of twenty-five full-time faculty members, including two professors and twenty-three lecturers, there are currently only nine full-time teachers on the faculty, including eight lecturers and one professor.¹⁴⁶ Meanwhile, 371 students were enrolled at the school in the fall of 2010, and in some semesters there are over 400 students.¹⁴⁷

Interview with Anderson Ngulube, *supra* note 3; Interview with Alice Sitali, *supra* note 120.

¹⁴⁴ See Ndulo, *Legal Education in Africa*, *supra* note 10, at 491 (citing Univ. of Zambia, Law School Handbook 1 (1970)).

¹⁴⁵ Interview with Misozi Lwatula, Lecturer, University of Zambia School of Law, in Lusaka, Zambia (Oct. 28, 2010) (on file with author).

¹⁴⁶ Interview with Anne Chanda, *supra* note 110.

¹⁴⁷ *Id.*

Operating with less than half the establishment of law teachers would present significant difficulties even if all members of the faculty were fully engaged with their responsibilities to the School. However, according to Anne Chanda, Acting Dean of the University of Zambia School of Law, this has not been the case. Law teachers skipping their own classes has become a chronic problem at the school, and some faculty members miss large percentages of their assigned classes each semester, frequently without giving advance notice to students.¹⁴⁸ In general, according to Chanda, faculty who spend little time at school are usually devoting their working hours to private practice.¹⁴⁹

The lack of sufficient numbers of law faculty at UNZA and the unavailability of those who are on the faculty are problems that have not been lost on UNZA's law students. A survey of seventy-four of ninety-five full-time students in their second-to-last-year of law school was revealing. In response to an open-ended survey question about the biggest problems at the School, over one-third of students mentioned unavailability of faculty, often specifically citing faculty skipping their classes and office hours.¹⁵⁰ Twenty-eight percent cited insufficient numbers of faculty as a concern.¹⁵¹ The shortage of full-time faculty and the rampant absenteeism of theoretically full-time teachers may have contributed to low morale amongst students and to a souring of relations between students and their teachers. Forty-five percent of the students surveyed mentioned intimidation by faculty or overt disrespect for students as one of the School's most serious problems.¹⁵²

In part, these problems are a result of simple economic reality. While it is common for faculty at the School to earn little more than

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ I distributed survey questions to all students present in a Human Rights class, in which the entire third-year class of full-time students was enrolled. Seventy-four of ninety-five students were present in class, and 100% of those present responded to the survey. The question on institutional challenges read as follows: "What are the most significant problems at your law school? Please provide as much detail as possible in the space below." Twenty-six of the seventy-four students mentioned unavailability of faculty as a problem at the school. Survey of Third-Year Law Students at the University of Zambia School of Law, in Lusaka, Zambia (October 7, 2010) (on file with author).

¹⁵¹ Twenty-one of seventy-four students mentioned an insufficient number of faculty members as a problem. *Id.*

¹⁵² Thirty-three of seventy-four students mentioned disrespect and intimidation of students by faculty as a problem. *Id.*

\$1000 a month from the University, private consulting jobs and private law practice in Zambia can be much more lucrative, and some local law firms charge hundreds of dollars an hour for their services.¹⁵³ Similar problems afflict the law faculties of other African countries, where law teachers often earn as little as \$400 to \$600 a month from their law schools but have corporations and law firms competing for their time and willing to remunerate them generously.¹⁵⁴ Under these circumstances, it is unsurprising that some members of African law faculties feel compelled to devote most of their time to private practice, even if doing so means shirking law school responsibilities.

The disparity between private-sector income for qualified lawyers and salaries for members of the law faculty also makes recruiting qualified new faculty difficult, and, again, the problem is common throughout much of the continent.¹⁵⁵ Those who do join African law faculties often stay for only a few years, and the high turnover rate prevents schools from maintaining a focused, coherent sense of direction.¹⁵⁶ This has certainly been the case at UNZA.¹⁵⁷ Related to and compounding the problem of low salaries for African law teachers, the profession has failed to garner the prestige associated with law teaching in the West, and the best African legal minds often feel they can have greater impacts in the private sector or in civil service positions.¹⁵⁸

¹⁵³ Interview with Anne Chanda, *supra* note 110; Interview with Misozi Lwatula, *supra* note 145.

¹⁵⁴ See Thomas F. Geraghty & Emmanuel K. Quansah, *African Legal Education: A Missed Opportunity and Suggestions for Change: A Call for Renewed Attention to a Neglected Means of Securing Human Rights and Legal Predictability*, 5 LOY. U. CHI. INT'L L. REV. 87, 98-99 (2007) (emphasizing that the huge disparity between faculty salaries and those of private sector lawyers and consultants makes it extremely difficult for faculty to teach full-time).

¹⁵⁵ See Ndulo, *Legal Education in Africa*, *supra* note 10, at 501 (indicating that impoverished law schools face difficulties in recruiting and retaining law teachers, which in turn has affected the quality of legal education in Africa).

¹⁵⁶ See *id.* at 502 (noting that, as bright young law teachers have little incentive to teach in the long term, African law schools lack the "driving core" that accompanies stability in faculty and resources). At the University of Zambia School of Law, five people who had been full-time faculty members in mid-2006 were no longer on the faculty by the end of 2010, representing over half of the full-time faculty at the law school at the later date. Interview with Anne Chanda, *supra* note 110.

¹⁵⁷ Interview with Anne Chanda, *supra* note 110.

¹⁵⁸ See Dauphinais, *supra* note 13, at 71-72 (listing shrinking university resources and inadequate faculty salaries as the primary reasons that teaching law in Africa is no longer deemed a desirable career path).

The economic incentives driving the best legal minds away from teaching and pulling those who are willing to teach away from their academic duties help to perpetuate a self-reinforcing cycle. As members of the law faculty abandon their responsibilities to students, the quality of education declines, and graduates of local law schools are less prepared than they should be as they matriculate into the bar admission course at ZIALE. Low pass rates at ZIALE limit the size of the community of lawyers, thus keeping legal fees high and ensuring the continuation of the incentives that limit the size and dedication of Zambian law faculties.

Unfortunately, University policy has reinforced external pressures on law school faculty to spread their time amongst numerous endeavors. Like most other African universities,¹⁵⁹ UNZA pays equal salaries to faculty of all disciplines. This policy represents a failure to respond to the market for legal services that draws high-quality lawyers away from academic careers. Instead of raising the salaries of law teachers, however, UNZA chose a compromise that ensures an absentee faculty. For the first twenty-seven years of the School's operation, UNZA rules prohibited faculty at the School of Law from practicing, but in 1994, the policy changed, allowing lecturers and professors to open their own law firms.¹⁶⁰ Before that shift in policy, the School of Law had a truly full-time faculty, but now it has become common for many "full-time" teachers at the School to spend weeks at a time away from campus, even in the middle of the semester.¹⁶¹ Again, the problem has been common throughout the continent, yet, according to at least one estimate, schools that have tried to prohibit their faculties from spending large amounts of time engaging in outside consulting projects or in private practice have driven away their best teachers.¹⁶²

¹⁵⁹ See Geraghty & Quansah, *supra* note 154, at 99 (discussing the "peculiar" salary structure of African universities paying all professors the same regardless of discipline).

¹⁶⁰ Interview with Anne Chanda, *supra* note 110.

¹⁶¹ "When I was a student, we used to have truly full-time faculty members. We used to have lecturers seated, waiting for us anytime. They were here the whole time," Mrs. Chanda said. *Id.*

¹⁶² See Dauphinais, *supra* note 13 at 72 (quoting Yash Ghai, *Law, Development and African Scholarship*, 50 MOD. L. REV. 750, 774-75 (1987)) ("Some countries or universities have tried to ban or regulate outside work, but this, if effective, drives the best people out of teaching.").

Dramatic growth in the student body has compounded the effects of the shortage of faculty and unavailability of those who are ostensibly full-time teachers. Until the mid-1990's, there were never more than forty students in a class at UNZA's law school, but those numbers have more than doubled since that time.¹⁶³ This growth has mirrored a similar enlargement of the student body of the University but has not been accompanied by an increase in material or human resources.¹⁶⁴ Likewise, law schools throughout Africa have faced pressure to admit more and more students in recent years, often doubling their student bodies without increasing the sizes of their faculties or of their libraries, which has diminished the quality of African legal education.¹⁶⁵

Ultimately, Acting Dean Chanda attributes much of the problem to personal failures by some members of the faculty to live up to their responsibilities. "The problem of people not attending classes and not marking on time has been seated with certain individuals, year in and year out. It's a question of commitment," Chanda said.¹⁶⁶ According to Chanda, for faculty unwilling to teach their classes or attend office hours, "it's immoral to receive a salary . . . okay you can say it is too small, then leave it and resign. . . . Commitment is cardinal. And as I sit here, I think that people are just not committed. Or maybe they are tired. I don't know."¹⁶⁷

Discussing the school's most significant challenges, Mrs. Chanda also noted the law faculty's failure to produce scholarship. It is rare for faculty of the School of Law to publish at all, and even less common for them to publish outside the School's own journal, the *Zambia Law Journal*.¹⁶⁸ This systemic failure to engage in research and to produce scholarship has also contributed to the School's failure to provide adequate pedagogy.¹⁶⁹ Similarly, incentives to supplement law teaching with other endeavors have left law teachers in other African countries with little time for

¹⁶³ Interview with Anne Chanda, *supra* note 110.

¹⁶⁴ *Id.*

¹⁶⁵ See Ndulo, *supra* note 10, at 497 (indicating that the pressure to increase law school class sizes without the necessary resources to do so "ha[s] adversely affected the learning environment").

¹⁶⁶ Interview with Anne Chanda, *supra* note 110.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

academic writing.¹⁷⁰ In some countries, government hostility to faculty research efforts has inhibited scholarship.¹⁷¹ Chanda summarized the current state of research at UNZA somberly. "Research is very minimal. It's the pillar of teaching, but very little is happening," she said.¹⁷²

Finally, Mrs. Chanda expressed a belief that despite fairly consistent high admissions standards throughout the School's history, the quality and attitudes of matriculating students have declined over time, in part due to failures in the country's primary and secondary education systems.¹⁷³ "It's like we are not getting the cream anymore. This problem is not starting from UNZA. It's starting from the primary school. But there is a problem in the education system. Even simple sentence construction, nowadays, a fourth year university student, they write sentences that make you think, which school did you go to?" Chanda said. And Dean Chanda believes the problem is partly an issue of attitude. "They want things given to them. They are not willing to read, they are not willing to do their work," she said of UNZA's law students.¹⁷⁴

¹⁷⁰ See Dauphinais, *supra* note 13, at 98 (noting that African law teachers are overextended and must engage in outside employment to compensate for low teaching salaries).

¹⁷¹ See *id.* at 100 (citing evidence that government authorities play a role in impeding the improvement and reform of African legal education).

¹⁷² Interview with Anne Chanda, *supra* note 110.

¹⁷³ Mrs. Chanda noted that UNZA central administration's shift, several years ago, to a quota system by which it holds a fixed number of spaces at the School of Law open for students from Humanities, rather than using a strict cutoff based on first-year marks in Humanities, may have slightly reduced the quality of students, but students matriculating at the School of Law now have relatively similar marks in their first year at the University to students from previous decades. *Id.*

¹⁷⁴ *Id.* Despite Mrs. Chanda's statement that UNZA's admissions standards have remained essentially constant, the opinion is common amongst Zambian lawyers that standards at UNZA have declined. "Nowadays, students are all driving cars. They are all accountants, HR managers. They are in full employment. Generally, the strict requirements for getting into law school have been compromised at UNZA. Now, all those with money, you want to do law, you go law school." Interview with Likando Kalaluka, *supra* note 113. Mr. Ngulube expressed similar sentiments. "I think the standards have gone down," he said. "And this is evident in the skill that you notice in the lawyers when they finally come to practice. They are not as sharp as the lawyers that left in the early 90s and mid-90s . . . some of the people that are doing law would have been better off doing something else." Interview with Anderson Ngulube, *supra* note 3; Interview with Palan Mulonda, *supra* note 30.

At least part of the Zambian legal academy's failure likely results from pedagogical choices. Like most other former British colonies in Africa, UNZA's School of Law adopted the British approach to legal education as an undergraduate degree program.¹⁷⁵ Students who want to matriculate into the School of Law spend their first year at UNZA in the School of Humanities and Social Sciences and then study at the School of Law for an additional three years.¹⁷⁶ The structure of the law curriculum is inherited from the British system and is similar to that in most other common law countries. Students in their second year of legal study take Legal Process, Law of Contract, Torts, Criminal Law, and Constitutional Law.¹⁷⁷ The third year, like the second, is composed only of required courses including, Land Law, Commercial Law, Family Law, Evidence, and Administrative Law.¹⁷⁸ In the final year of study, the school requires students to take Jurisprudence and Company Law, and students are then free to choose three electives.¹⁷⁹ Students in their second year of legal study participate in a moot court program, and, as in most other African countries, students in their final year of study must write a research paper under the supervision of a member of the faculty.¹⁸⁰

At UNZA, as at most other law schools in common law Africa, faculties have inherited their teaching styles from the British tradition, but with greater stress on formalism.¹⁸¹ In most classes, students do not study cases or learn through the Socratic Method.¹⁸² Instead, most members of the faculty assign textbooks and teach through the lecture method, generally supplemented by separate tutorials in which students participate in the learning process through exercises and presentations.¹⁸³ Nonetheless, the

¹⁷⁵ Interview with Anne Chanda, *supra* note 110.

¹⁷⁶ *Id.*

¹⁷⁷ UNIV. OF ZAMBIA SCHOOL OF LAW HANDBOOK 9 (2008) (on file with author).

¹⁷⁸ *Id.* at 10.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 11.

¹⁸¹ See Stephen K. Huber, *Legal Education in Anglo-Phonic Africa: With Particular Attention to a Case Book and the Criminal Law*, 1969 WIS. L. REV. 1188, 1190 (1969) (highlighting some of the challenges students face as a result of receiving a formalistic education in a rapidly changing society); Ndulo, *supra* note 10, at 492 (detailing the focus of African legal education on the mere memorization, not application, of legal standards and rules).

¹⁸² Interview with Misozi Lwatula, *supra* note 145.

¹⁸³ *Id.*

pedagogical approach tends toward the rote and mechanistic.¹⁸⁴ Teachers generally do not focus on policy questions, and students are expected to memorize large numbers of rules, studying the holdings of major cases rather than the cases themselves or the reasoning used to arrive at legal conclusions.¹⁸⁵ The pedagogical focus on rote memorization of rules likely inhibits students' development of the critical reasoning skills necessary to excel at ZIALE and to be fully effective as practitioners, for practitioners are unlikely to encounter the precise situations students learn in the classroom, and even if they do, they are unlikely to remember what they learned.

The gap between theory-based curricula and the more practice-oriented approach at ZIALE may also partially explain why law graduates are unprepared for the rigors of the bar admissions course.¹⁸⁶ At UNZA, while a clinical program once gave some students the chance to gain practical experience and knowledge, the school closed its clinic in 2009 after it determined there was insufficient oversight to provide students with meaningful learning experiences.¹⁸⁷ As discussed below, ZIALE's curriculum has also developed into a largely academic enterprise, with students attending lectures on subjects that often correspond with law school courses. Even so, ZIALE does test students on a range of practice-oriented knowledge, and the lack of clinical programs at Zambia's law schools, along with the focus on academic knowledge at those schools, may contribute to low pass rates at ZIALE.

At UNZA, there may be some reason for optimism. In the last year, the School of Law has begun to encourage lecturers to experiment with the Socratic Method, and in some classes the school has abandoned the use of tutorials as law faculty shift toward a more interactive approach to teaching.¹⁸⁸ Moreover,

¹⁸⁴ See Ndulo, *supra* note 10, at 492-93 (emphasizing the need for a shift in focus from rules-based thinking to critical thinking in the African legal education system).

¹⁸⁵ *Id.* at 493.

¹⁸⁶ Interview with Anne Chanda, *supra* note 110; Interview with Palan Mulonda, *supra* note 31.

¹⁸⁷ Interview with Anne Chanda, *supra* note 110.

¹⁸⁸ Interview with Misozi Lwatula, *supra* note 145. School of Law Dean Margaret Munalula distributed notes in mid-2010 declaring "the teaching methodology will from 2010 onwards change to the Socratic Method." Dr. Margaret Munalula, *Teaching in the School of Law: Relevant Materials and Notes*, 4

despite the faculty's serious failure to produce scholarly literature, the school initiated a book project five years ago, providing financial incentives for faculty to write books with some focus on local law.¹⁸⁹ Since the beginning of the book project, members of the faculty have produced casebooks on torts, contracts, and criminal law, amongst others.¹⁹⁰ While these books often contain very little explanatory commentary, the focus on cases may improve the educational experience of students. Moreover, the inclusion of Zambian cases will make legal education more relevant to Zambian students. Finally, local production of the books, which UNZA Press publishes,¹⁹¹ may provide students with easier access to required materials.

Nonetheless, a severe shortage of material resources at UNZA hampers the educational experience and compounds the problem of low salaries driving faculty toward outside jobs. In the survey of full-time students in their second-to-last year, 82.4% of respondents listed a lack of books or other learning materials as one of the most serious problems at the law school, making this problem the most commonly cited issue amongst the surveyed students.¹⁹² In fact, it is incredibly difficult for most students at the School of Law to access books for the School's required courses. While new casebooks by local faculty may ease the dilemma, historically the campus bookstore has carried very few of the books required for law school classes, and it is expensive and logistically difficult for students to get law books from abroad.¹⁹³ Moreover, the School's law library, a converted faculty office, is insufficiently stocked and open to students only a few hours a week at most.¹⁹⁴ As a result, large groups of students often share a single book, and others go without.¹⁹⁵

Until a few years ago, the University of Zambia, the country's flagship public university, had the only law school in Zambia.

(June 15, 2010) (on file with author). The distributed notes also included a Wikipedia article on the Socratic Method. *Id.* at 40.

¹⁸⁹ Interview with Anne Chanda, *supra* note 110.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Survey of Third-Year Law Students at the University of Zambia School of Law, *supra* note 150.

¹⁹³ Interview with Misozi Lwatula, *supra* note 145.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

Since 2005, however, three new law schools have emerged in Lusaka.¹⁹⁶ Because none of Zambia's new law schools have had any students gain admission to the bar yet, it is too early to assess how effectively they are preparing students for practice. So far, in any case, members of the legal community have tended to view these new law schools as offering less rigorous, inferior programs compared to UNZA.¹⁹⁷

Some of the problems at Zambia's newer law schools undoubtedly mirror those at the UNZA. For one thing, lecturers at the fledgling institutions are often moonlighting faculty from UNZA,¹⁹⁸ already stretched too thin to devote full attention to their teaching duties at the nation's first law school. Second, one of these new schools, Zambia Open University, is a correspondence program,¹⁹⁹ which certainly compounds the challenges for students hoping to get one-on-one attention from their teachers. Pedagogical approaches at the other two law schools, Lusaka University and Cavendish University, are similar to those at UNZA.²⁰⁰ Moreover, while UNZA's law clinic has shut down at least for the time being, none of the new law schools have offered any clinical education programs at all.²⁰¹ Finally, there seems to be a consensus that Zambia's new law schools have lower admissions requirements and, generally, lower caliber students than UNZA.²⁰² Ultimately, the performance of the law graduates of Zambia's newer law schools at ZIALE may provide some insight on the quality of legal education at those institutions.

Despite the apparently widespread sentiment in Zambia's legal community that the new law schools are inferior to UNZA, they may, in time provide an important spur to pedagogical innovation as they compete for students. Likewise, they may exert pressure on each other's faculties to demonstrate greater devotion to their

¹⁹⁶ These schools, which are all private, are Zambia Open University, Lusaka University, and Cavendish University. *Id.*

¹⁹⁷ Interview with Anne Chanda, *supra* note 110; Interview with Likando Kalaluka, *supra* note 113; Interview with Anderson Ngulube, *supra* note 3; Interview with Alice Sitali, *supra* note 120.

¹⁹⁸ Interview with Misozi Lwatula, *supra* note 145.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Interview with Palan Mulonda, *supra* note 30.

²⁰² Interview with Anne Chanda, *supra* note 110; Interview with Likando Kalaluka, *supra* note 113; Interview with Anderson Ngulube, *supra* note 3; Interview with Alice Sitali, *supra* note 120.

academic responsibilities. While UNZA's public status might, to some extent, insulate the School of Law from the effects of this competition, it is unlikely to be completely immune to it. Ultimately, despite the skepticism Zambian lawyers have shown toward the newer schools, these institutions have the potential to improve the Zambian legal community both by providing a larger pool of new lawyers to the country and, through competitive pressure, by raising the quality of Zambian legal education.

4.1.2. *Reasons for Resource Scarcity: A Case of Malign Neglect*

Overall, it is difficult to avoid the conclusion that economic factors are at the heart of the Zambian legal academy's dysfunction. Of course, even under the best of circumstances, Zambia's relative national poverty would limit the resources available for both public and private education. Nonetheless, external factors have likely added to the problem. First, while African law schools benefitted greatly from early support by Western donors, that support declined severely beginning a generation ago.²⁰³ In the 1960s and 1970s, as African states gained independence, Western nations contributed human and financial resources to help build the continent's new law schools.²⁰⁴ This influx of assistance derived largely from a prevalent philosophical conviction that educating new lawyers was crucial to the social and political development of Africa's new nations.²⁰⁵ Yet a combination of factors led to an almost complete abandonment of these early projects. As many African states descended into political turmoil and one-party systems ruled by autocratic leaders, national support for education in general and legal education in

²⁰³ See Dauphinais, *supra* note 13, at 79 (recounting the decline in American legal assistance, and an overall decrease in Western assistance to the developing world, which were both detrimental to the continuing developmental progress of African law schools); Ndulo, *Legal Education in Africa*, *supra* note 10, at 493 (explaining that many British and American legal scholars have stopped teaching in African countries due to the lack of economic stability, as well as the decline in Western funding to support such teachers).

²⁰⁴ See Geraghty & Quansah, *supra* note 154, at 89-91 (describing the initial commitment American law teachers had provided to legal educators in Africa as part of the "law and development" movement).

²⁰⁵ *Id.* (noting that the once prevailing notion that improved legal education in Africa would further economic efficiency, equality, and justice, has disappeared because of the declining support from external donors).

particular declined.²⁰⁶ At the same time, a debate emerged amongst Western legal academics as to whether the “law and development” philosophy that drove early support for building African law schools modeled on Western academies was truly the best way to meet the needs of African countries.²⁰⁷ Ultimately, external support for African legal education dwindled to almost nothing.²⁰⁸

This decline coincided with the World Bank and International Monetary Fund (IMF) imposing austerity measures that required pronounced cuts in public spending as conditions of continued loan agreements for governments in developing countries.²⁰⁹ Thus, while educational spending retained its relative position as a percentage of social spending, the overall decline in such expenditures throughout Africa meant less money and fewer resources for African law schools.²¹⁰ In Zambia in particular, the transition from Kenneth Kaunda’s one-party state to the restoration of multi-party democracy in 1991 also marked a rapid shift toward economic liberalization and away from the highly regulated, state-directed economy of Kaunda’s regime.²¹¹ While

²⁰⁶ *Id.* (stating that since 1986, there has been no organized effort among American legal educators to provide the same assistance they had provided in previous decades).

²⁰⁷ *Id.* (claiming that “the time is now ripe for such a reassessment and for the development of new strategies” regarding legal education in Africa).

²⁰⁸ *Id.*

²⁰⁹ *Id.*; see Thomas A. Kelley, *Exporting Western Law to the Developing World: The Troubling Case of Niger*, 39 GEO. WASH. L. REV. 321, 327–28 (2007) (explaining that the Washington Legal Consensus called for decreased social spending and reallocation of resources to the private sector); Ndulo, *Legal Education in Africa*, *supra* note 10, at 496–97 (describing how in many African countries, funding for education is being jeopardized by the failure of the government to maintain budget allocations in the face of economic decline).

²¹⁰ See Ndulo, *Legal Education in Africa*, *supra* note 10, at 496–97 (noting that this lack in funding is exacerbated because most law schools are state-funded institutions).

²¹¹ See REFUGEE STUDIES CTR., OXFORD UNIV., *Executive Summary, ZAMBIA: DEREGULATION AND THE DENIAL OF HUMAN RIGHTS, SUBMISSION TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS* (2000), available at <http://raid-uk.org/work/zambia.htm> (summarizing the effects of economic deregulation on fundamental economic and social rights in Zambia); REFUGEE STUDIES CTR., OXFORD UNIV., *Education, ZAMBIA: DEREGULATION AND THE DENIAL OF HUMAN RIGHTS, SUBMISSION TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS* (2000), available at http://www.raid-uk.org/docs/Zambia/Privatisation_Rpt/S3_ii.pdf (stating that the MMD inherited an educational system that was already in decline because of lack of investment during the 1985–90 economic downturn).

Kaunda had nationalized a higher percentage of the country's industry than almost any other country on the continent, the new government adopted World Bank and IMF policies geared toward deregulation, privatization, and rationalization of the public sector employment system.²¹² At the same time, World Bank and IMF austerity measures have resulted in a "massive absolute reduction in public spending" in Zambia.²¹³ As a consequence, educational spending declined sharply, both as a percentage of GDP and in real terms.²¹⁴ By 1996, average real spending in Zambia was only \$50 per student, while it had been \$118 in 1983.²¹⁵

The decline in resources available for public education in Zambia may account for a reduction in the quality of primary and secondary education in the country and for the prevalent sense that students matriculating into Zambian universities have lower educational aptitude than their counterparts in the 1990s. In any case, the dearth of resources is clearly evident at the UNZA School of Law and certainly accounts, to a large extent, for the severe human resources problems and for the insufficient availability of educational material. Ultimately, these limitations have kept academic salaries low, ensuring that members of Zambian law faculties will have powerful incentives to seek outside work. A corresponding scarcity of material resources, including inadequately stocked law libraries, has prevented students from gaining access to required reading materials for their classes. It seems likely, moreover, that declining expenditures on primary education have led to a decline in the quality of students entering Zambian law schools, thus making the task of educating new lawyers more difficult. Yet the conclusion is inescapable that the

²¹² *Id.*

²¹³ See REFUGEE STUDIES CTR., OXFORD UNIV., *Austerity and the Denial of Social Rights*, ZAMBIA: DEREGULATION AND THE DENIAL OF HUMAN RIGHTS, SUBMISSION TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 220 (2000), available at http://raid-uk.org/docs/Zambia/Privatisation_Rpt/Sde_i.pdf ("However, in the case of Zambia it is the catastrophic decline in overall levels of funding of the social sectors in real terms which is the cause of most concern."). This problem has been exacerbated by the austerity measures demanded by the Bank and IMF.

²¹⁴ See REFUGEE STUDIES CTR., OXFORD UNIV., *Education*, ZAMBIA: DEREGULATION AND THE DENIAL OF HUMAN RIGHTS, SUBMISSION TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (2000), available at http://www.raid-uk.org/docs/Zambia/Privatisation_Rpt/S3_ii.pdf (noting that the lack of resources available is the major contributor to failures in the African legal education system).

²¹⁵ *Id.* at Section 3.I.C.1, EXPENDITURE ON EDUCATION.

University of Zambia (and probably Zambia's newer law schools) bears some of the responsibility for failing to adequately prepare Zambian law students for entrance into the post-graduate bar-admissions program; and, in the final analysis, failure rates at ZIALE are a crucial cause of the limited number of lawyers in Zambia.

4.2. *Bar Admission: The Zambia Institute of Advanced Legal Education*

Earning a law degree is not the final challenge in the gauntlet of obstacles an aspiring Zambian lawyer must face. As is typical in common law countries in Africa, admission to the bar in Zambia requires completion of a formal, post-graduate academic curriculum after attaining an LLB;²¹⁶ as mentioned above, ZIALE currently authorizes and administers this curriculum in Zambia. While ZIALE may help prepare would-be lawyers for the rigors of practice, the Institute operates as a barrier to entry to the legal profession that prevents many Zambian law graduates from becoming lawyers. And though Zambia's resource-strapped education system bears some of the responsibility for failure rates at ZIALE, institutional problems at ZIALE itself likely contribute to the crisis.

In general, the African post-graduate bar-admissions program, often called a law practice institute, takes between a year and a year-and-a-half to complete.²¹⁷ Though originally intended as practice labs, mimicking the atmosphere of law offices and with few formal lectures, many of these institutes have developed into something more akin to an extra year of law school, in which institute faculty teach traditional law school subjects in a classroom setting.²¹⁸ In Zambia, after students finish their law degrees, they spend ten months studying ten subjects at ZIALE.²¹⁹ While some of these subjects are practice-oriented, ZIALE staff teaches all of the subjects in an academic, classroom setting through a traditional

²¹⁶ See Ndulo, *Legal Education in Africa*, *supra* note 10, at 49-94 (stating the general educational requirements for practicing law in African countries).

²¹⁷ Interview with Palan Mulonda, *supra* note 30.

²¹⁸ See Ndulo, *Legal Education in Africa*, *supra* note 10, at 494 (describing the lack of practical experience in post-graduate institutes, due in large part to the shortage of practitioners on staff).

²¹⁹ Interview with Palan Mulonda, *supra* note 30.

lecture method.²²⁰ To gain clinical experience, ZIALE students spend the first half of each day working in a law office or governmental department, and they spend afternoons attending lectures at ZIALE headquarters.²²¹

ZIALE candidates take mid-term tests and final exams in each subject, and in order to qualify as lawyers they must pass all ten courses.²²² If a ZIALE candidate passes all ten subjects, she is then called to the bar and can begin practicing law immediately.²²³ If she fails six or fewer exams, she may retake exams for only the subjects she failed, and she may attempt to retake those exams a maximum of two more times, after which the candidate must wait five years before repeating the entire ten-subject course.²²⁴ If the candidate fails seven or more exams, she must retake exams for all ten courses, subject also to the five-year ban if she fails to pass all ten subjects after a maximum of three total attempts.²²⁵

Tuition at ZIALE is 12 million Kwacha (about \$2,500 USD in the winter of 2011), which is more than twice the price of full tuition for the final year of law school at UNZA.²²⁶ While approximately 75 percent of UNZA students are on some level of government scholarship,²²⁷ ZIALE does not provide scholarships to any students.²²⁸ Despite the high price tag, some law firms sponsor ZIALE students, and those without sponsorship from employers sometimes find support from immediate or extended family members.²²⁹ According to Palan Mulonda, ZIALE's director, there are very few Zambian law graduates unable to attend ZIALE due to financial constraints.²³⁰ Nonetheless, Mr. Mulonda noted that until a recent shift in policy requiring ZIALE candidates to pay 75

²²⁰ ZIALE courses include professional conduct; bookkeeping/accounts; conveyancing/legal drafting; probate; commercial transactions; company law; civil procedure; domestic relations; criminal procedure; and evidence. Interview with Palan Mulonda, *supra* note 30.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ University of Zambia, Academic Office figures show the tuition for 4th year LLB students to be 2,983,500 kwacha per semester.

²²⁷ Interview with Anne Chanda, *supra* note 110.

²²⁸ Interview with Palan Mulonda, *supra* note 30.

²²⁹ *Id.*

²³⁰ *Id.*

percent of tuition up front, many candidates attended ZIALE on credit, and outstanding debts to the institution go back a decade.²³¹ The cost seems even more significant given the high failure rates at the Institute.

Only a small fraction of law graduates who enroll at ZIALE will pass the course on their first attempt, and for the past several years, first-time takers have cleared ZIALE at rates hovering between ten percent and twelve percent.²³² Somewhat more encouraging figures emerge on examination of longer-term statistics. For example, 61.5% (360 out of 585) of the people who enrolled at ZIALE between 2003 and 2009 gained admission to practice by the fall of 2010.²³³ Even so, these figures indicate that a large percentage of Zambian law graduates are unable to practice law and unable to contribute to the country's legal needs.

ZIALE's low pass rates are attributable, in part, to the dramatic resource limitations of the Zambian education system, from primary through tertiary school. Nonetheless, ZIALE itself bears some portion of the responsibility for high failure rates at the Institute. First, although ZIALE's curriculum mimics that of a typical law school, with teachers lecturing on academic subjects in a classroom setting, lecturers at ZIALE tend to be practitioners with little or no outside experience as educators.²³⁴ Second, although ZIALE students spend weekday mornings in clinical attachments, the organizations that host them often do not expose students to the range of clinical experiences necessary to supplement the academic portion of the program and to prepare students for ZIALE exams.²³⁵ Finally, a lack of grading transparency raises concerns about the integrity of the process.

Despite the original intention to organize Zambia's law practice institute as a clinical laboratory, offering students the chance to learn in a practice-oriented setting, the program at ZIALE currently resembles a conventional law school curriculum far more than a practitioner's office.²³⁶ This setup may be an imperfect mechanism for preparing future lawyers for the profession. Perhaps more importantly, however, the current format is intrinsically flawed in

²³¹ *Id.*

²³² *Id.*

²³³ Figures provided by ZIALE headquarters on November 9, 2010.

²³⁴ Interview with Palan Mulonda, *supra* note 30.

²³⁵ *Id.*

²³⁶ *Id.*

its schizophrenic mismatch of a faculty comprised almost entirely of practitioners with a curriculum focused on academic pedagogy. To be sure, ZIALE's faculty contains many of Zambia's most illustrious lawyers, including a former attorney general, supreme court judges, and some of the country's most respected and experienced private practitioners.²³⁷ Nonetheless, given the academic nature of ZIALE classes, these lawyers may not be ideally suited to their roles at the Institute.

In Zambia, as in most common law countries, the legal practitioner's degree is an undergraduate LLB, and aspiring legal academics must obtain an LLM before they can teach.²³⁸ By retaining a faculty composed almost entirely of practitioners, however, ZIALE has accepted a cadre of law teachers without the academic training generally required for such an enterprise. If ZIALE were truly run as a clinical program, practitioners would likely be the best people to administer it. Under the circumstances, however, ZIALE's faculty is likely unprepared for its responsibilities.

This problem may be compounded by the club-like nature of ZIALE hiring. According to ZIALE Director Palan Mulonda, ZIALE has traditionally been a "closed-shop" when it comes to choosing new instructors.²³⁹ The Institute has not advertised for open positions, but, rather, current members of the faculty have "head hunted," recommending new teachers to their peers.²⁴⁰ Overall, the composition of the faculty has been fairly stagnant, and many of the members of ZIALE's faculty have been teaching at ZIALE and its predecessor, the Law Practice Institute, since the 1960s.²⁴¹ As a consequence, teaching at ZIALE suffers. According to current ZIALE students, several of the instructors simply read lectures from prepared notes, and others forgo doctrinal teaching for large portions of the class period to engage students in casual discussions about current events.²⁴² Ultimately, it may behoove ZIALE to reconsider its curriculum, its hiring process, or both.

²³⁷ *Id.*

²³⁸ Interview with Anne Chanda, *supra* note 110.

²³⁹ Interview with Palan Mulonda, *supra* note 30.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Interviews with four anonymous ZIALE students, in Lusaka, Zambia (Nov. 28, 2010).

A second problem at ZIALE is that, although students enrolled in the program spend several hours a day in clinical pupilages, attached to local firms or government departments, these attachments often do not provide ZIALE candidates with sufficient clinical experience to prepare them for their qualifying exams.²⁴³ ZIALE's pupilages are intended to supplement the academic portion of the curriculum, and should be a crucial component of each student's preparation for the bar. In theory, these pupilages should expose students to a wide variety of practice areas, and, at least historically, this would have been eminently feasible, with Lusaka's small law firms engaged in general practice and handling a broad array of cases.

Nonetheless, students attached to a government office were always likely to work in only a limited area of practice. Moreover, many Lusaka firms now specialize in only one or two fields.²⁴⁴ Today, it is common for these firms to use ZIALE students as work horses on menial projects, providing little oversight or guidance to help students develop as lawyers.²⁴⁵ As in Zambia, students at the law practice institutes of other African countries undertake apprenticeships in law firms, and they encounter a host of problems similar to those faced by students in Zambia; the typical African law firm is "small and poorly organized," and senior lawyers generally have little time to assist with the training of apprentices.²⁴⁶ This is certainly the case in Zambia, and, in the final analysis, ZIALE students tend to receive insufficient guidance during their apprenticeships and to work in only a small portion of the fields covered in the ZIALE course. In the opinion of Mr. Mulonda, ZIALE's director, this has "far reaching consequences on their performance" at ZIALE.²⁴⁷

Finally, a lack of transparency in ZIALE's grading process has the potential to undermine the integrity of the system. Despite ZIALE's failure rates, students who do not clear midterms or final exams are not permitted to review their test papers.²⁴⁸ In the opinion of Mr. Mulonda, such transparency is unnecessary and

²⁴³ Interview with Palan Mulonda, *supra* note 30.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ Ndulo, *Legal Education in Africa*, *supra* note 10, at 494 (detailing the failure of many law practice institutes to meet the expectations of their founders).

²⁴⁷ Interview with Palan Mulonda, *supra* note 30.

²⁴⁸ *Id.*

would be counterproductive.²⁴⁹ First, Mr. Mulonda pointed out that ZIALE assigns both a lecturer and an assessor for each subject, and assessors go over the lecturers' grades to ensure reliability.²⁵⁰ Additionally, according to Mr. Mulonda, allowing students to review exam papers would be an annoyance to ZIALE lecturers that would deter high-quality instructors from teaching at the Institute.²⁵¹

Nonetheless, allowing students to review exam papers would serve two important purposes. First, given that around 90 percent of ZIALE candidates fail the course on their first attempt, permitting exam review would be a highly useful learning experience that could help unsuccessful candidates understand the reasons for their failures and how to improve their performances. Second, greater transparency would ensure the integrity of the grading process, including both the good faith of the graders and the accuracy of the results.

Ultimately, the lawyers who administer and teach at ZIALE have financial incentives to keep the profession small. With only a few hundred private practitioners in the country, many Zambian law firms are able to charge hundreds of dollars an hour, fees that equal or surpass those of lawyers in countries like the United States and the United Kingdom, and that are vastly disproportionate to incomes of other professionals in Zambia. Simple rules of supply and demand ensure that smaller numbers of lawyers will tend to keep fees higher, and an influx of new talent into the profession would increase competition and lower the price of legal services. This economic reality may have a subconscious influence even on lecturers and assessors grading in good faith. To some extent, that monopolistic impulse may have influenced ZIALE's initial refusal to allow students from Zambia's new law schools to matriculate at the Institute, a decision that stood until students from those schools compelled ZIALE to accept them by suing in the High Court.²⁵² A transparent grading process

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ "The exam scripts are the property of ZIALE. You would just be opening an unnecessary Pandora's box. We believe we have serious quality assurance with people of high integrity. We don't need to subject these people to unnecessary scrutiny from litigious and vexatious students. It would be hard to retain the high quality lecturers we have if we opened them up to that." *Id.*

²⁵² See *Zambia Open University Law Students Win Major Legal Battle*, *supra* note 142. Students at fledging law schools in Kenya and Ghana have won similar

would provide an important check on the natural incentive of the legal community—in the final analysis, a professional guild—to keep competition to a minimum by restricting access to the profession.

Likewise, allowing students to view their exams would create an extra check on possible grading errors by ZIALE lecturers and assessors. While it is likely that these professionals grade in good faith, like the members of UNZA's faculty, they are extraordinarily busy, stretched thin by multiple professional endeavors and competing demands on their time. Students, who ultimately have the strongest incentive to ensure the accuracy of their results, could play a vital role in guaranteeing the dependability of the grading process. If ZIALE's grading system is truly reliable, the Institute's lecturers and assessors should have little concern about opening that system to review.

A variety of causes have prevented the Zambian legal profession from growing quickly enough to meet the country's legal needs. The legacy of colonialism, including the suppression of African education, is a primary factor. After independence, the abrupt transition to a Western legal framework and the need for sophisticated legal experts to navigate the complex, foreign machinery of the new system left the country in an immediate and continuing crisis. Since independence, the dearth of resources in Zambia's education system, along with institutional policy at UNZA and ZIALE, has suppressed the growth of the profession. I will discuss possible ways to mitigate this crisis in Section 7 below.

5. ALTERNATIVES TO FORMAL LEGAL REPRESENTATION: THE ROLE OF CUSTOMARY LAW

Although the formal justice system processes private common law claims and criminal prosecutions under the Zambian penal code, customary law plays a more prominent role than any Western legal tradition for a large portion of Zambia's population. As discussed briefly above, Zambia's formal justice system remains pluralistic, with statutorily authorized local courts administering customary law, subject to review by courts using Western legal principles. On appeal from a local court, Zambia's higher courts,

battles in recent years to gain admission to their countries' law practice institutes. Interview with Palan Mulonda, *supra* note 30.

employing a standard adopted from British colonialists,²⁵³ will overturn customary law only if it is “repugnant to natural justice, equity, or good conscience.”²⁵⁴ Countries throughout Africa have implemented similar norms for navigating pluralistic systems, combining Western and indigenous legal principles.²⁵⁵ As is common throughout the continent, people living in rural areas tend to live almost entirely under the umbrella of customary law, administered by traditional courts that operate without the sanction of the formal justice system.²⁵⁶

Zambia’s diverse range of customary law traditions is largely beyond the scope of this Article. Nonetheless, it is worth engaging in a brief discussion of customary law in Zambia because the application of that law provides an alternative to Western legal processes—in which lawyers are indispensable to the accurate administration of justice—and may mitigate, to some extent, the problems associated with the critical shortage of Zambian lawyers. The use of customary law often leads to violations of ostensibly universal human rights deeply ingrained in the collective consciousness of the Western world and enshrined in international covenants and national laws.²⁵⁷ On the other hand, customary law

²⁵³ See Mwenda et al., *supra* note 14, at 958 (citing J.L. Kanganja, *Courts and Judges in Zambia: The Evolution of the Modern Judicial System* (1981) (unpublished Ph.D. thesis, University of London) (on file with the University of London Library); Merry, *supra* note 21 at 897 (noting that colonial governments created a dual legal system by permitting Africans to retain “indigenous” or “native law” subject to Western legal review by their colonial rulers).

²⁵⁴ See Local Courts Act of 1966, Cap. 29, 4 Laws of Rep. of Zambia (1995) (stating how customary law interacts with a formal system of justice); Richardson, *supra* note 14, at 21.

²⁵⁵ See Mwenda et al., *supra* note 14 (discussing the Nigerian legal system as an example).

²⁵⁶ See Richardson, *supra* note 14, at 21 (noting that, in addition to the official local courts recognized by the Zambian government under the Local Courts Act, there also exist traditional courts which are not officially recognized by the Zambian government, and which have no link to the local courts or other official Zambian courts).

²⁵⁷ See generally Anne Hellum, *Human Rights and Gender Relations in Postcolonial Africa: Options and Limits for the Subjects of Legal Pluralism*, 25 LAW & SOC. INQUIRY 635, 635–36 (2000) (discussing broad issues concerning gender, human rights, and legal pluralism in Africa); Mwenda, *supra* note 14 (discussing the Swazi custom of “sexual cleansing,” whereby a widow marries her husband’s brother and the deceased’s property passes to the brother); Mwenda et al., *supra* note 14 (discussing the problem of “property-grabbing” under customary law, where family members of deceased husbands can take property from widows); Richardson, *supra* note 14 (identifying the lack of inheritance rights as a key cause of many women’s rights issues in Africa).

courts can also serve as effective mechanisms for enforcing social order and community norms and can provide useful alternatives to Western legal frameworks in countries in which the formal legal infrastructure is relatively undeveloped. In this sense, customary law both helps to fill gaps in the primarily Western-oriented, state-sponsored legal system and to underscore the need for further development of that system to combat abusive and inequitable practices.

Zambia's local courts, where lawyers are prohibited from representing clients, are empowered to adjudicate a wide variety of claims according to customary traditions, including simple tort and contract actions.²⁵⁸ The majority of claims adjudicated in local courts, however, involve domestic relationships, including spousal abuse, divorce claims, and matters of succession.²⁵⁹ Traditional courts, operating in rural areas, oversee all claims arising from disputes in their territories,²⁶⁰ including, commonly, witchcraft trials. Although the use of customary law can provide a vital means of preserving the cultural heritage of African communities and of supplementing resource-strapped Western legal systems, implementation of customary law can also result in shocking injustice. Sexual purification of widows and property grabbing, two customs common throughout much of Zambia and much of Southern Africa, merit particular attention, both because of their widespread use and because of the enormity of their impact on African populations.

The rite of sexual purification of widows in Zambia typically involves sexual intercourse between a male relative of the deceased husband and the new widow.²⁶¹ Tradition holds that this practice cleanses the widow of her late husband's spirit, and communities throughout Southern and East Africa exert great pressure on widows to submit to the rite soon after their husbands' burials.²⁶²

²⁵⁸ Local Courts Act of 1966, Cap. 29, 4 Laws of Rep. of Zambia (1995) pt. 3, §§ 8-9.

²⁵⁹ *The Dilemma of Local Courts in Zambia: A Question of Colonial Legal Continuity or Deliberate Customary Law Marginalisation*, AFRONET, available at <http://www.vanuatu.usp.ac.fj/library/Online/USP%20Only/Customary%20Law/Dilemma.htm>.

²⁶⁰ See Richardson, *supra* note 14, at 21 (discussing the Zambian dual legal system).

²⁶¹ See Mwenda, *supra* note 14 (discussing developments in African customs and laws regarding the sexual cleansing of widows).

²⁶² *Id.* (noting similar practices in Malawi and Kenya).

Despite the onslaught of AIDS in sub-Saharan Africa, adherence to the custom of sexual cleansing remains prevalent because of the deeply held belief that it is necessary to prevent insanity and disease from spreading through a widow's village.²⁶³ Widows who resist the practice may be ostracized and prevented from remarrying, and communities are likely to blame non-compliant widows for subsequent misfortune that befalls the village.²⁶⁴ In some areas, use of a condom during the rite of sexual cleansing is prohibited as incompatible with the tradition.²⁶⁵

Local and traditional courts in Zambia have been active enforcers of sexual purification rites.²⁶⁶ Traditional courts are beyond the reach of the formal justice system. Local courts are subject to oversight from magistrates' courts, the High Court, and the Supreme Court, but despite a 1967 decision in which the High Court found sexual cleansing repugnant to natural justice and invalid,²⁶⁷ the same court upheld the practice in 1987, preventing a widow from remarrying until a member of her late husband's family had intercourse with her.²⁶⁸ Consequently, the practice is still widespread, and, for obvious reasons, it raises troubling concerns, both as a matter of public health in a country suffering terribly from the African AIDS pandemic and in terms of women's sexual autonomy.

Similarly, property grabbing implicates the rights of widows. The practice, rooted in the traditional treatment of private property as belonging to an entire extended family rather than to any particular individual,²⁶⁹ generally entails relatives of a deceased

²⁶³ *Id.* (“[C]hange is coming slowly, village by village, hut by hut. In a region where belief in witchcraft is widespread and many women are taught from childhood not to challenge tribal leaders or the prerogatives of men, the fear of flouting tradition often outweighs even the fear of AIDS.”).

²⁶⁴ *Id.* (retelling the story of Fanny, a twenty-three year old Malawian widow whose deceased husband's relatives threatened that if she refused to exorcise her dead husband's spirit, she would be blamed every time a villager died).

²⁶⁵ *Id.*

²⁶⁶ See Himonga, *supra* note 62, at 32–33 (noting that “traditional” local courts enforce purification rights by awarding damages to actors who claim to have been aggrieved by people who are alleged to have *cibinde*, the condition of being tainted by the spirit of the dead spouse).

²⁶⁷ *Kaniki v. Jairus*, (1967) ZLR 71 [HC].

²⁶⁸ See Himonga, *supra* note 62, at 32 (citing *Kadakwa v. Siadimbozye* 1987/HP/A/10 (Lusaka)).

²⁶⁹ See Mwenda, *supra* note 14 (noting that under the custom in Swaziland, women may not own property or enter into contracts without the sponsorship of

husband taking away items from the marital household, thus depriving many widows of their only earthly possessions.²⁷⁰ In Zambia, the practice is tied to the powerful belief in communal ownership of property, especially in rural areas.²⁷¹ While it is plausible that this communitarian approach to property rights confers real benefits on traditional African communities, it is undeniable that property grabbing has dispossessed countless Zambian widows and their children of their primary means of economic and, in some cases, biological survival.²⁷²

Despite Zambia's accession to the Convention on the Elimination of All Forms of Discrimination Against Women and domestic legislation that provides some protection from property grabbing, the tradition is deeply entrenched.²⁷³ In fact, the custom is so common that frequent involvement by law enforcement officers complicates attempts to enforce the law.²⁷⁴ Furthermore,

a male relative, and that Swazi custom holds that a deceased husband's property belongs to his family and not to his widow); Mwenda et al., *supra* note 14, at 954-55.

²⁷⁰ See Mwenda et al., *supra* note 14, at 950, 954-55 (noting that African customary law is cited as justification for disenfranchising a widow from owning even property jointly purchased with the deceased husband and observing that "[i]f an individual with custody of commonly owned property dies, his relatives will take custody of the property, leaving the deceased's widow without any legal or equitable entitlement to it, unless the deceased's extended family assigns her such rights"); Richardson, *supra* note 14, at 19 (discussing similar practices in Zambia, Botswana, and Ghana).

²⁷¹ Mwenda, Mumba & Mvula-Mwenda, *supra* note 14, at 954 ("A Zambian citizen has no legal capacity to dispose of property that is communally owned under a will. Such property is instead held in trust for his extended family—that is, the communal owners.").

²⁷² *Id.* at 951 ("When Tamara Zulu's husband died, leaving her as the sole breadwinner, she turned to her skills as a tailor to support her five children. Then came Ms. Zulu's in-laws. A month after the funeral, relying on tribal traditions that assign inheritance rights to relatives of deceased men, the out-of-towners swooped in and took everything, including Zulu's only sewing machine. The suddenly destitute widow scrambled to rent tailoring equipment and feed her family.") (quoting Geraldine Sealey, *African Widows Left Destitute By Relatives Snatching Property*, CHRISTIAN SCI. MONITOR, May 13, 2003, at 7).

²⁷³ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1981, 1249 U.N.T.S. 13. See Richardson, *supra* note 14, at 21 (noting that although Zambia has ratified CEDAW and other international human rights treaties, the Zambian Constitution and laws continue to legitimize a discriminatory practices).

²⁷⁴ See Mwenda et al., *supra* note 14, at 952 (noting that police officers, who are poorly paid, poorly housed, and suffer poor working conditions, often benefit from the practice of property-grabbing and thus turn a blind eye).

although Zambia's constitution forbids gender discrimination, the same article makes an exception for customary law.²⁷⁵ Most Zambian women still marry under customary law, and when they seek redress for property grabbing or protection from the sexual purification rite in customary courts, they rarely prevail.²⁷⁶

The prevalent use of customary law certainly helps to fill gaps in the undeveloped infrastructure of Zambia's western legal system. Additionally, customary law may serve as a vital preservative of traditional cultural rites, threatened by ever-encroaching Western sensibilities. Both property grabbing and sexual purification of widows have been, historically, closely related to the tradition of levirate marriage, in which the deceased husband's brother marries the new widow, whom he "inherits" along with his brother's property.²⁷⁷ Ideally, this practice can provide a valuable source of protection and security for widows and their children, ensuring their welfare and their continued participation in the life of the husband's family.²⁷⁸ However, extreme poverty, has led to the more common scenario of a widow's extended family looting the marital household without any concomitant fulfillment of traditional obligations to the widow or her children.²⁷⁹ Additionally, the AIDS pandemic has made the sexual purification rite devastatingly dangerous.

Like Zambia, other African countries have grappled to find a balance between traditional norms that preserve cultural heritage and social harmony and Western legal principles that often conflict with those norms.²⁸⁰ Like Zambia, when traditional practices in

²⁷⁵ CONST. OF ZAMBIA of 1991 (as amended by Act No. 18 of 1996) art. 23(1) & (4)(d) ("Subject to clauses (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect . . . Clause (1) shall not apply to any law so far as that law makes provision . . . for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons.").

²⁷⁶ Mwenda et al., *supra* note 14, at 952 (citing Geraldine Sealey, *African Widows Left Destitute By Relatives Snatching Property*, CHRISTIAN SCI. MONITOR, May 13, 2003, at 7, 10).

²⁷⁷ See Mwenda, *supra* note 14 (noting that, under the levirate system, the children conceived after the husband's death are considered to be his offspring, and that, historically, "the practice of widow inheritance guaranteed many widows and their children some form of social security").

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ See, e.g., Johanna E. Bond, *Gender, Discourse, and Customary Law in Africa*, 83 S. CAL. L. REV. 509, 511-513, 558-569 (2010) (criticizing the ability of CEDAW

other African countries are incompatible with Western principles, the customs commonly implicate fundamental human rights concerns for vulnerable minorities. Ultimately, the challenge for each of these countries is to find a way to safeguard its cultural legacy and maintain social order, while maintaining respect for rights considered crucial in the global community.

As Professor Thomas Kelley has argued, wholesale suppression of traditional practices in a developing country with limited financial and legal resources could have a devastating impact.²⁸¹ Aside from any cultural implications, it is true that eliminating customary legal traditions without a sufficient means of filling the void left by their absence could result in chaos.²⁸² Nonetheless, when custom is used as a pretext for oppression of the most vulnerable members of a society, it is clear that such custom is in need of reform. Thus, while the use of customary law in Zambia

and the African Charter to reconcile international human rights law and traditional norms, and analyzing the Protocol to the African Charter on the Rights of Women in Africa for its potential to engage traditional leaders in dialogue about localized implementation of human rights norms); Jamil D. Mujuzi, *Bride Wealth (Price) and Women's Marriage-Related Rights in Uganda: A Historical Constitutional Perspective and Current Developments*, 24 INT'L J.L. POL'Y & FAM. 414, 424-27 (2010) (arguing that, had the Ugandan Constitutional Court considered Uganda's international legal obligations under CEDAW, it would not have upheld as constitutional the retention of the cultural practice of bride price); Remigius N. Nwabueze, *Securing Widows' Sepulchral Rights through the Nigerian Constitution*, 23 HARV. HUM. RTS. J. 141, 147-155 (2010) (comparing, *inter alia*, the sepulchral rights of widows in the United States and Kenya, and proposing that the Nigerian Constitution could serve as the basis for expanding the sepulchral rights of Nigerian widows); Willem van Genugten, *Protection of Indigenous Peoples on the African Continent: Concepts, Position Seeking, and the Interaction of Legal Systems*, 104 AM. J. INT'L L. 29, 57-62 (2010) (discussing the South African Constitutional Court's jurisprudence on indigenous law against the backdrop of the drafting and domestic reception of the U.N. Declaration on the Rights of Indigenous People in several African countries).

²⁸¹ See generally Kelley, *supra* note 209 (offering a focused case study on how external legal reform has affected the day-to-day lives of people in Niger).

²⁸² In fact, in Zambia, there have been some promising signs of positive evolution of the sexual purification rite. President Levy Mwanawasa, who served from 2001 until his death in 2008, urged that coercive sex between widows and their late husbands' relatives should be discouraged. Sharon LaFraniere, *AIDS Now Compels Africa to Reconsider Widows' 'Cleansing'*, N.Y. TIMES, May 11, 2005, at A8. Since then, some of Zambia's tribal chiefs have declared they would not enforce the practice, and some of Zambia's tribes have successfully substituted cleansing rites that do not involve intercourse. Nonetheless, the practice remains common in much of the country. *Id.*; Mwenda, *supra* note 14 (discussing the decision among several chiefs to ban sexual cleansing out of a concern for the transmission of HIV/AIDS).

undoubtedly helps to conserve valuable cultural traditions and to maintain social order in areas where Zambia's Western legal structure remains undeveloped, some of the inequities of Zambian customary traditions also underscore the need to develop the formal legal infrastructure further. An integral component of that development must be the growth of the legal profession, with a focus on the introduction of more lawyers into the system. Ultimately, lawyers have the unique technical expertise to oversee an expansion of the formal legal regime in a manner that can maintain Zambian cultural traditions while protecting the fundamental human rights of those most susceptible to abuse. Nonetheless, under the best of circumstances, this process will be slow. In the next section, I will focus on Zambian paralegals in a discussion of mechanisms within the official justice system that can help mitigate the effects of Zambia's shortage of lawyers.

6. ALTERNATIVES TO FORMAL LEGAL REPRESENTATION:
PARALEGALS

Customary law can serve as a valuable, albeit imperfect, means of filling gaps in Zambia's resource-strapped legal infrastructure, ameliorating the effects of the country's dearth of lawyers. At least as administered in traditional courts, however, customary law is external to Zambia's official justice system and does nothing to improve the plight of those already enmeshed in conflict within that system, either as parties to civil litigation or as criminal defendants. Because Zambia does not prohibit non-lawyers from giving legal advice outside the courtroom, paralegals, have been able to play an important role in assisting indigent Zambians in need of legal assistance, both through the direct provision of legal advice and through pre-conflict education and sensitization programs.²⁸³ While Zambian paralegals cannot supplant the work of lawyers, they can supplement that work and can mitigate some of the harm the scarcity of lawyers in the country has caused. Yet despite the potential benefits of paralegal work, few Zambian paralegals currently provide legal services to prisoners, the most vulnerable group within the Zambian justice system.²⁸⁴ Moreover,

²⁸³ See Stapleton, *supra* note 36, at 21; Paralegal Alliance Network, University of Zambia School of Law, & Danish Institute for Human Rights, *supra* note 114, at 30.

²⁸⁴ Paralegal Alliance Network, University of Zambia School of Law & Danish Institute for Human Rights, *supra* note 114, at 30.

the extreme scarcity of resources, lack of standardization of the profession, and the limited education of many working as paralegals in Zambia reduces their impact.

Although Zambia's Legal Practitioner's Act requires that anyone representing a criminal defendant in court must have been admitted to the bar,²⁸⁵ the country has no regulations preventing non-practitioners from giving mere legal advice outside the courtroom.²⁸⁶ Consequently, unlike American paralegals,²⁸⁷ paralegals in Zambia can and do operate autonomously.²⁸⁸ These paralegals are generally affiliated with non-profit, non-governmental organizations (NGOs), most of which engage in information, education, and sensitization campaigns to make people aware of their legal rights.²⁸⁹ These sorts of campaigns can obviate the need for litigation and can reduce the need for more expensive legal services from lawyers. Some NGOs also use paralegals to offer basic, individualized legal advice to clients

²⁸⁵ The Legal Practitioners Act provides that non-practitioners may not act as advocates in any civil or criminal proceedings. Legal Practitioners Act of 1973, Cap. 30, 4 LAWS OF REP. OF ZAMBIA (2003) § 42. However, a separate provision provides that nothing in the Act should be construed to prohibit non-practitioners from representing clients in court in civil matters, so long as the rules of the court permit the practice. Legal Practitioners Act of 1973, Cap. 30, 4 LAWS OF REP. OF ZAMBIA (2003) § 3, cl. (3)(a).

²⁸⁶ Stapleton, *supra* note 36, at 21 (noting that Zambian paralegals are not regulated). The Legal Practitioners Act does prohibit some out-of-court legal activities by non-practitioners, including the preparation, for money, of written documents relating to legal proceedings and the preparation, for money, of letters threatening legal action if the recipient does not pay money or comply with a request to perform or desist from some action. Legal Practitioners Act of 1973, Cap. 30, 4 LAWS OF REP. OF ZAMBIA (2003) § 44.

²⁸⁷ MODEL RULES OF PROF'L CONDUCT R. 5.5 cmt. (1983) ("[L]imiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons."); Thais E. Mootz, *Independent Paralegals Can Fill the Gap in Unmet Legal Services for the Low-Income Community*, 5 D.C. L. REV. 189, 197 (2000) (noting that the underlying theory behind unauthorized practice of law statutes in the United States is that "only those who have graduated from an accredited law school and have passed the bar are able to give competent legal advice"); Rhode, *supra* note 17, at 1806 (noting that, despite recommendations from scholars and practitioners to broaden court access through the provision of non-lawyer services, sweeping bans on unauthorized practice of law, criminal prohibitions against unauthorized provision of legal services, and the majority of significant judicial rulings on the issue militate against expanding the practice).

²⁸⁸ See Paralegal Alliance Network, University of Zambia School of Law, & Danish Institute for Human Rights, *supra* note 114, at 44-45 (noting that Zambian paralegals frequently operate without any supervision from lawyers).

²⁸⁹ *Id.* at 30.

about their particular cases.²⁹⁰ Moreover, because Zambian paralegals tend to be affiliated with NGOs performing charitable work, Zambians seeking their assistance generally do not face the kinds of financial hurdles associated with hiring a lawyer. In fact, most organizations offering paralegal services do not condition their work on any sort of means-based testing, and the services they provide are usually free to clients.²⁹¹

Though there is no doubt that Zambian paralegals play a vital role in helping to meet the country's legal needs, the profession cannot, even under the best of circumstances, perform the kind of sophisticated work or analysis many clients require from a legal counselor. And in Zambia, the limitations that paralegals would face anywhere are compounded by a host of problems stemming from the challenges Zambia faces as a developing country. First, despite the use of the term "paralegal" to describe a range of service-providers, there are no common standards encompassing either the qualifications of Zambian paralegals or the work they perform.²⁹² This concern might be less significant if Zambian paralegals were subject to regular oversight by lawyers and acting merely in support roles. However, because paralegals in Zambia often give substantive legal advice and operate with little or no supervision, the lack of standards regulating the profession is troubling.

Of particular concern, Zambian paralegals have not been subject to any uniform criteria to determine their eligibility to operate as paralegals or to dispense legal advice.²⁹³ Fortunately, most legal aid service providers in Zambia require anyone they hire as a paralegal to have at least a 12th grade education.²⁹⁴ Ideally, this ensures a minimal level of sophistication that reduces the harm that can result from dissemination of bad legal advice. Furthermore, several organizations provide trainings for paralegals that range in duration from five days to nine weeks.²⁹⁵ Nonetheless, some organizations have no formal hiring requirements for paralegals.²⁹⁶ Given the seriousness of the

²⁹⁰ *Id.*

²⁹¹ *Id.* at 34.

²⁹² *Id.* at 40–44.

²⁹³ *Id.*

²⁹⁴ *Id.* at 40.

²⁹⁵ *Id.* at 44.

²⁹⁶ *Id.* at 40.

responsibilities. Zambia's nascent paralegal services industry would certainly benefit from standardized admission and training requirements.

In fact, a group of four NGOs calling itself the Paralegal Alliance Network (PAN) has, in an attempt to professionalize Zambia's community of paralegals, developed a curriculum that would standardize paralegal training.²⁹⁷ The curriculum entails a three-year diploma course, which includes six months of clinical work.²⁹⁸ Though this program would have the benefit of giving all Zambian paralegals sufficient training to handle their often broad professional responsibilities, implementation of the curriculum would be fraught with a number of difficulties and drawbacks. First, a three-year program would virtually mirror the period required for earning a Zambian law degree, which involves three years of legal instruction plus one year in humanities. This daunting prospect might deter many capable prospective paralegals from entering the profession. Perhaps more importantly, transforming PAN's curriculum into a formal diploma course would require a great investment of human and financial resources. Given the dependence on donor funding, upon which all of PAN's member organizations and other Zambian NGOs that use paralegals rely, and given the extreme scarcity of resources available for education in Zambia generally, realization of PAN's goals may be unrealistically ambitious. As it is, the severe shortage of resources available to legal aid organizations using paralegals seriously limits the impact of their work.

Perhaps the most significant dilemma for the Zambian paralegal industry to overcome is the lack of adequate incentive structures to attract and retain qualified paralegals. Most Zambian paralegals work as volunteers rather than as salaried employees, and, outside of urban centers, the majority of paralegals have no computers or vehicles.²⁹⁹ While some organizations can afford to provide their paralegals with sporadic allowances for telephone communication and transportation, others cannot afford even these meager expenses. In some areas, paralegals without offices operate sitting under trees in the communities they serve.³⁰⁰ This scenario

²⁹⁷ *Id.* at 44.

²⁹⁸ *Id.*

²⁹⁹ *Id.* at 46.

³⁰⁰ *Id.*

is unlikely to change in the foreseeable future. All paralegal organizations in Zambia are dependent on funding from external donors, and much of the money they rely on is allotted for specific projects and activities.³⁰¹ There is no reason to believe that funding will dramatically increase or that donor priorities will shift significantly anytime soon.

Despite the challenges paralegal organizations in Zambia face, it would be possible to make better use of the resources currently available. Specifically, Zambian paralegals are not currently providing adequate assistance to prisoners, who arguably are the country's most vulnerable population. As of 2008, only two paralegal organizations worked directly in Zambian prisons, and both of these organizations focused on rehabilitation and improvement of prison conditions rather than on provision of actual legal assistance to prisoners.³⁰² It would be possible, however, to use paralegal services to make real progress toward improving the efficiency and fairness of Zambia's criminal justice system.

In Malawi, paralegals have provided a model for how this might be done, as they have greatly increased the efficiency with which magistrates' courts process criminal claims and have facilitated the release of large numbers of Malawian prisoners.³⁰³

Malawi's Paralegal Advisory Service (PAS), composed of "senior prison officials, police officers, and members of the judiciary," has played a key role in the success of these efforts by providing oversight and guidance to participating paralegals working in prisons to educate prisoners on their rights and on how to defend themselves in magistrates' courts.³⁰⁴ Paralegals operating under the auspices of the PAS have also helped to divert large numbers of criminal cases from the overburdened official justice system toward community-based resolution at the village level, and they have worked to improve conditions for those still within the Malawian prison system.³⁰⁵ Finally, Malawian paralegals have facilitated the establishment of "camp-courts" held within prison compounds, at which magistrates preside over trials

³⁰¹ *Id.*

³⁰² *Id.* at 30.

³⁰³ See generally Anderson, *supra* note 15, at 1 (noting the role of paralegals in Malawian penal reform efforts).

³⁰⁴ *Id.* at 4.

³⁰⁵ *Id.* at 4, 7-8.

of prisoners charged with minor offenses and release the prisoners back to their communities to serve out their sentences.³⁰⁶ Ultimately, the work of Malawian paralegals has led to the release of thousands of prisoners.³⁰⁷ Based on Malawi's success, paralegals in Benin, Kenya, and Uganda have adopted similar programs.³⁰⁸

Because most NGOs using paralegals in Zambia keep no comprehensive statistics on their caseloads, it is impossible to know the extent of their impact with any precision.³⁰⁹ Nonetheless, Zambian paralegals have undeniably mitigated the effects of the country's paucity of lawyers, and they have managed to do so with extremely limited resources and training. Even so, the benefits derived from the work of Zambian paralegals could be increased if the requirements for entry into the profession were standardized, and with some reallocation of currently available resources including efforts to duplicate the successes of paralegals in Malawi. These issues are discussed in greater detail in the next Section of this Article.

7. THE WAY FORWARD

Although some of the problems I have described in this Article are complex and intractable, African legal reformers could address many of these challenges through relatively straightforward policy improvements and through reallocation of the scarce resources currently available. Because of colonial policies that discouraged education for native populations, the African legal profession began to develop only after independence. The monumental task of building a profession to meet the needs of a new system foreign to most of the people subject to its rules would be daunting in any context. Africa's poverty has compounded that difficulty in ways

³⁰⁶ *Id.* at 6 (noting that the program has encouraged magistrates to screen cases at prisons).

³⁰⁷ *Id.* at 5 (explaining that these releases were accomplished via "bail, discharge of the case, dismissal or . . . compassionate grounds").

³⁰⁸ See Penal Reform Int'l, *The Paralegal Advisory Service: A Role for Paralegals in the Criminal Justice System*, in ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY 145, 147 (PENAL REFORM INT'L & BLUHM LEGAL CLINIC OF THE NW. UNIV. SCH. OF LAW eds., 2007) (noting "the common features" between the various programs, including training in "criminal law and procedure").

³⁰⁹ See Paralegal Alliance Network, University of Zambia School of Law, & Danish Institute for Human Rights, *supra* note 114, at 38 (noting that although some record-keeping mechanisms were utilized including monthly, quarterly or annual reports and work plans, few of the organizations were able to provide any detail regarding workload).

that are impossible to overcome fully without access to resources currently unavailable to most countries on the continent or their key institutions. Numerous factors, including World Bank conditionalities, donor fatigue, and the indeterminate course of Africa's economic development, make availability of such resources uncertain for the foreseeable future. Nonetheless, real progress is achievable through a series of reforms focused on making better use of currently available legal resources to make legal assistance more accessible to average Africans and on increasing the number of African lawyers. Because Zambia's problems mirror similar issues throughout the continent, potential solutions in Zambia provide a possible model for broader, regional reform.

First, even with the limited number of lawyers now practicing in Zambia, several amendments to the current legal aid framework could enhance the quantity and quality of assistance for those most in need of legal aid in Zambia. Specifically, to provide maximum protection for Zambian criminal defendants, whose fundamental rights are more in jeopardy than any other actors in the legal system, the Legal Aid Board should reduce or eliminate its civil caseload. At the same time, the National Assembly should amend the Legal Practitioners Act to allow for contingency fees, which would make legal assistance from private practitioners available to more Zambians in civil cases. Additionally, LAZ should work to implement its resolution to require pro bono work from Zambian lawyers. Finally, Zambian paralegal organizations could effect major positive change by emulating paralegals in Malawi who have helped implement measures to improve the efficiency and accuracy of Malawi's criminal justice system.

Second, Zambia could grow its legal community without sacrificing the quality of its lawyers by implementing policy reforms at UNZA and at ZIALE. Reform in the Zambian legal academy should include increasing the pay of law faculty and restricting the outside work of law teachers. At the post-graduate law training institute, ZIALE, changes in hiring practices and enhanced grading transparency, coupled with possible amendments to the curriculum, are in order. Implementation of each of these reforms would be fraught with potential for political and inertial resistance; convincing relevant stakeholders to implement them would require sensitivity to the interests of numerous players in complex systems. Nonetheless, for the most part, these suggestions would not require dramatic increases in

available resources. Instead, redistribution of currently available resources could bring many of this Article's recommendations to fruition.

7.1. Increasing Impact

First, several initiatives could increase the availability of legal representation for those Zambians most in need of it without increasing the number of practicing lawyers in the country. One such initiative would entail a shift in emphasis away from civil cases at the Legal Aid Board. Scholars and legal activists have frequently argued that legal assistance in civil cases is a fundamental component of a modern legal aid system.³¹⁰ In the United States in particular, where an estimated eighty percent of the civil legal needs of the poor are unmet,³¹¹ commentators have often pointed out that the widespread failure to provide legal aid in civil cases casts a cloud of shame on the country.³¹² Of course, it is undeniable that civil cases can imperil extraordinarily important interests, and there are powerful arguments that a wealthy nation has a moral responsibility to offer legal aid in many such cases. Even so, the right to physical freedom is so basic and primary that it must be prioritized over the vast majority of interests at stake in civil cases. Yet civil cases comprise nearly fifteen percent of the Legal Aid Board's caseload, and most of those cases are land

³¹⁰ See, e.g., Bernice K. Leber, *The Time for Civil Gideon is Now*, 25 *TOURO L. REV.* 23, 28 (2009) (noting the "increased need for funding for civil services [and] a federal Civil Gideon statute" in the United States); Raven Lidman, *Civil Gideon as a Human Right: Is the United States Going to Join Step with the Rest of the Developed World*, 15 *TEMP. POL. & CIV. RTS. L. REV.* 769, 769 (2006) (commenting on the American Bar Association's resolution urging "federal, state, and territorial governments" to provide a right to legal counsel for civil litigation when essential "human needs are at stake"); Rhode, *supra* note 17, at 1799 (arguing that access to representation is vital to the justice system's legitimacy because it ensures that rights are made meaningful); John T. Broderick Jr. & Ronald M. George, *A Nation of Do-it-Yourself Lawyers*, *N.Y. TIMES*, Jan. 2, 2010, at A21 (reporting on the increasing occurrence of poor litigants appearing without legal counsel because, among other reasons, they cannot afford attorneys, they "do not qualify for legal aid," and budgets of attorney provision services are dwindling).

³¹¹ See Rhode, *supra* note 17, at 1785 (noting also that forty to sixty percent of the legal needs of the middle class are unmet).

³¹² See Leber, *supra* note 310, at 30 (applauding the efforts to "fight for access to justice"); Lidman, *supra* note 310, at 789-800 (summarizing the Civil Gideon-like services provided in forty-nine other countries); Rhode, *supra* note 17, at 1787-88, 1799 (noting the dearth of funds spent on legal services, as well as the sometimes irrational allocation of these resources).

disputes.³¹³ Meanwhile, of the almost 4,500 criminal cases in which defendants entered pleas in magistrates' courts in Lusaka District in 2009, the Board represented only eighty-nine clients. Given these dire figures, it is imperative that the Legal Aid Board redirect its energy toward greater representation of criminal defendants in magistrates' courts.

While reducing or eliminating the civil caseload of the Legal Aid Board would allow the Board's lawyers to provide more support for criminal defendants, the shift would, of course, leave some or all of the Board's civil clients without representation. Nonetheless, amendment of the Legal Practitioners Act to allow for contingency fee payments would more than make up for the difference; it would, in fact, significantly increase the availability of lawyers for Zambians engaged in civil litigation. As it is, only a handful of countries allow the use of contingency fees.³¹⁴ Yet, by allowing lawyers to accept payment as a portion of recovered damages, Zambia, and other African countries, could open the possibility of legal representation for much larger portions of their citizenry.

Of course, allowing contingency payments would not mean that every Zambian with a colorable civil claim would be able to obtain the services of a lawyer. In countries that do allow contingency fees, lawyers tend to accept only cases that seem likely *ex ante* to have the greatest chances of success and to result in the most lucrative payouts. Nonetheless, in a country with a per capita gross national product of only \$1070,³¹⁵ and in which lawyers often charge hundreds of dollars an hour, there is no question that changing the law to allow contingency fee payments would result in a major expansion of legal services available to people other than the wealthy in Zambia. This simple change in the Legal Practitioners Act could be one of the most impactful reforms possible without massive growth of the legal profession itself, and

³¹³ Interview with Anderson Ngulube, *supra* note 3.

³¹⁴ See HERBERT M. KRITZER, RISKS, REPUTATIONS, AND REWARDS: CONTINGENCY FEE LEGAL PRACTICE IN THE UNITED STATES 258-59 (2004) (assessing the contingency fee arrangements found in Canada, England, Scotland, Northern Ireland, Irish Republic, Australia, New Zealand, Dominican Republic, Greece, France, Brazil, and Japan).

³¹⁵ See *Data by Country - Zambia*, THE WORLD BANK, <http://data.worldbank.org/country/zambia> (last visited Feb. 14, 2012) (providing information about Zambia's gross national income per capita, among other economic data).

could lead to tremendous improvement of Zambia's civil justice system.

The Law Association of Zambia could also contribute to increased access to justice by working toward the implementation of its resolution to require pro bono work from Zambian lawyers. With only 731 private practitioners in the country, Zambian lawyers have an extraordinary privilege to operate with limited competition in a restricted market. For now, failure rates at ZIALE ensure the continued suppression of that market. That LAZ has resolved to require pro bono work from Zambian lawyers represents a progressive move in itself. In the United States, for example, not only have there been virtually no successful attempts to require lawyers to do pro bono work, but state bars have also consistently refused even to attempt to implement mandatory pro bono policies.³¹⁶ Meanwhile, some state courts have held that requiring unpaid legal work violates the Takings Clause of the Fifth Amendment.³¹⁷ LAZ's resolution thus represents a recognition of the fortunate status of Zambian lawyers, whose high income levels reflect the limited access to the profession created in part by flaws in the bar admissions program those lawyers administer. Nonetheless, over three years after LAZ made its determination on pro bono requirements, Zambian lawyers are still not subject to any rule on pro bono work. To implement such a rule would require amendment of the Legal Practitioner's Act.³¹⁸

Finally, even with the limited number of lawyers practicing in Zambia, and even with the limited resources available for legal aid services, Zambian paralegals could make dramatic improvements in the criminal justice system by emulating the work of paralegals in Malawi. The success of Malawi's paralegals is particularly salient to efforts to improve access to justice in Zambia because of the similarities between the two countries' justice systems and

³¹⁶ See Rhode, *supra* note 17, at 1807-09 (noting that, despite Supreme Court dicta that pro bono legal service is a public duty, U.S. courts are reluctant to explicitly require, rather than encourage, lawyers to participate in pro bono projects).

³¹⁷ See, e.g., *DeLisio v. Alaska Superior Court*, 740 P.2d 437, 443 (Alaska 1987) (holding that the Takings Clause of the Alaska Constitution prohibited compelled representation by an individual attorney without just compensation); see also *McNabb v. Osmundson*, 315 N.W.2d 9, 16 (Iowa 1982) (stating that, under Iowa and federal constitutional law, lawyers who are compelled to represent indigents may receive compensation at the public expense).

³¹⁸ Interview with Edward Sakala, *supra* note 7.

resource challenges. In Malawi, for example, as of 2006, there were only about “300 qualified lawyers for [a population of] 11 million people.”³¹⁹ At the same time, the government-run Legal Aid Department employed only four lawyers to serve the entire country’s legal aid needs.³²⁰ Moreover, inefficiencies in Malawi’s justice system were even worse than in Zambia, as half the prison population in 2006 was on remand, and some prisoners had been waiting more than seven years for their trials to begin.³²¹

Part of the success of Malawi’s paralegals depended on their ability to co-opt crucial actors in the Malawian justice system. By giving the police, prison officials, and the judiciary key roles in the PAS, Malawian paralegals protected themselves against the kind of obstruction that could have confounded their attempts to improve the system. Most importantly, Malawian paralegals have been careful not to tread on territory Malawian lawyers would be likely to perceive as their unique province; despite requests from magistrates to represent prisoners in court, Malawi’s paralegals have demurred, noting that trial advocacy is not their role and that lawyers must perform that task.³²² Any Zambian attempt to replicate the success of Malawi’s PAS must similarly include efforts to gain support and assistance from prison officials, police, the judiciary, and the bar. If those attempts fail, Zambian paralegals could, at worst, suffer the fate of American paralegals, with extremely circumscribed professional roles, including severe sanctions for dispensation of even basic legal advice.³²³ Ideally, however, Zambian paralegals could achieve significant reform of the criminal justice system, filling some of the titanic gaps left by the country’s scarcity of lawyers.

7.2. Increasing the Size of the Bar

In addition to restructuring programs and institutions to generate greater impact given the current scarcity of lawyers, reforms in the Zambian legal academy and of the bar admissions

³¹⁹ See Anderson, *supra* note 15, at 2.

³²⁰ *Id.*

³²¹ *Id.* at 3.

³²² *Id.* at 6–7.

³²³ In other African countries, including the Democratic Republic of the Congo, Kenya, Lesotho, Malawi, and Tanzania, lawyers have, at times, condemned reforms intended to expand access to justice with use of lawyers as “poor man’s justice.” See Stapleton, *supra* note 36, at 6 & n.11.

process at ZIALE could facilitate the admission of more lawyers to the Zambian bar. Of course, creating a larger community of legal practitioners, in and of itself, would not make legal aid services more accessible to the public. But greater competition in the legal market would bring down the cost of legal services in general, which would make legal advice available to more Zambians.

Any examination of the problems that lead most aspiring lawyers to fail the bar admissions program must begin with the process by which would-be lawyers train for entry into the profession, and dysfunction in the Zambian legal academy has, without question, contributed to high failure rates at ZIALE. A serious attempt to address the dearth of Zambian lawyers must include plans to improve conditions at Zambian law schools, with particular emphasis on making law teachers more professionally accountable and more available to their students, as well as on increasing student access to learning materials.

First and foremost, full-time Zambian law teachers must honor their responsibilities to work full time on teaching and research. A law school with an absentee faculty cannot possibly fulfill its commitment to provide students with the attention necessary to produce graduates prepared to become practicing lawyers. Furthermore, the teaching of a faculty that generates little or no scholarship is likely to stagnate; if legal academics are not constantly engaged in deliberation about how the law can and should develop, they will be more likely to teach only what the law is, rather than what it might become. Consequently, the rote, mechanistic style of teaching common in African law schools will continue. To that end, UNZA and other law schools in Zambia should implement policies to discourage law faculty from pursuing outside work, and they should provide incentives for law teachers to treat their academic employment as a full-time commitment and to produce scholarship.

To accomplish these goals, UNZA should end its policy of allowing law faculty to spend large amounts of time in private practice. Since 1994, this policy has led law teachers at UNZA to abandon their responsibilities to the law school, spending the vast majority of their time at their respective law firms, which provide far more income than the meager salaries available at UNZA. Professor Kirsten A. Dauphinais has noted that African law schools that prohibit law faculty from taking outside jobs have lost their

best teachers to more lucrative opportunities.³²⁴ While it might well be true that UNZA and other Zambian law schools would lose some of their best-credentialed faculty if they limited the time full-time law teachers could spend practicing law, the resulting scenario would almost certainly be superior to the status quo. Now, on any given day, even in the middle of a semester, one can frequently walk down the corridors of the School of Law without finding a single member of the faculty in his office.³²⁵ Now, law teachers are regularly unavailable for their posted office hours.³²⁶ Now, law school lecturers skip large numbers of classes without notice to students or to law school administrators.³²⁷ Surely it would be better to settle for a mediocre faculty of truly full-time academics than to limp along with an arguably more accomplished faculty that refuses to be present at school.

Zambian law schools could also offset the enticement of lucrative alternative employment opportunities by raising the salaries of law teachers, in recognition of the very different markets for legal expertise and for the kind of knowledge academics in most other disciplines possess. Although it would be infeasible to make salaries for legal academics equivalent to the incomes of Zambia's most successful private practitioners, it would be possible to narrow the gap. Without question, raising the salaries of law teachers in comparison to those of other academics would be politically difficult. Nonetheless, the move would represent an acknowledgment of economic reality. Additionally, Zambian universities could implement the change gradually by weighting the apportionment of periodic university-wide salary raises.

Increasing student access to books and other learning materials will also be a crucial element in any serious plan to improve the quality of Zambian legal education. As mentioned, the unavailability of required law books was the most commonly cited problem amongst UNZA students surveyed on challenges at the

³²⁴ See Dauphinais, *supra* note 13, at 98 (stating that in East Africa, the recruitment and retention of law instructors has been particularly difficult because of the "low salaries . . . [and] heavy teaching demands").

³²⁵ Interview with Anne Chanda, *supra* note 110.

³²⁶ *Id.*; see also Survey of Third-Year Law Students at the University of Zambia School of Law, *supra* note 150.

³²⁷ Interview with Anne Chanda, *supra* note 110; see also Survey of Third-Year Law Students at the University of Zambia School of Law, *supra* note 150.

School of Law.³²⁸ Needless to say, as long as students are unable to obtain required reading materials for their classes, the quality of their learning experiences will suffer significantly. At UNZA, policies already in place may eventually enhance student access to required reading materials for their classes. As more local faculty produce casebooks for publication, UNZA press could prove to be a much more reliable source than British publishers, whose books are difficult and expensive to obtain from overseas, and are generally out of stock at Zambian bookstores. Nevertheless, locally produced casebooks have also proven to be prohibitively expensive for many law students, and they too are often out of stock at UNZA's bookstore.³²⁹ To redress this problem, UNZA and other Zambian law schools must find ways to increase the supply and reduce the cost of required reading materials for class. Given the large number of law students at UNZA and Zambia's new law schools, this goal might be attained by moving to a lower margin, higher volume business model, which could provide all of Zambia's law students with cheaper books while maintaining overall profit levels for UNZA Press. Zambian law schools might achieve similar ends by requiring teachers to distribute copies of relevant cases, along with their own commentary, or to post such materials online.³³⁰ Whatever solution Zambian law schools choose, it is imperative that they ensure the availability of learning materials for the students in their charge.

Unless and until Zambian law schools remedy the problems of faculty absenteeism and the unavailability of learning materials, education at these schools will remain substandard. Crucially, however, at least partial solutions to these dilemmas are possible despite the financial constraints confronting all Zambian institutions of higher education. Without changes at ZIALE, however, even the most effective reforms of Zambian legal

³²⁸ See Survey of Third-Year Law Students at the University of Zambia School of Law, *supra* note 150.

³²⁹ Interview with Misozi Lwatula, *supra* note 145.

³³⁰ For several years, UNZA's School of Law administered the Zambia Legal Information Institute, which was established in 1996 as an Internet repository of Zambian legal data, including case law and statutes. The site also provided space for lecturers to post class materials, but few members of the faculty took advantage of this feature, and the school no longer updates or administers the site. The Zambian judiciary has expressed interest in taking over administration of the site but has not yet taken any action. Interview with Anne Chanda, *supra* note 110.

education will likely be insufficient to stimulate growth of the legal profession sufficiently to meet Zambia's potential to produce qualified new lawyers. To that end, ZIALE should reform its employment practices by vetting qualified candidates for teaching positions in an open hiring process. Moreover, however accomplished ZIALE's lecturers may be as practitioners or jurists, ZIALE should create systems to monitor its faculty's classroom performance and to hold substandard teachers accountable. This could be done through classroom visits by qualified legal academics, teaching evaluations from students, or both.³³¹

It is also worth considering revising ZIALE's curriculum to reflect the original, clinical orientation intended for African bar admissions programs. First, ZIALE teachers, most of whom are practitioners with no academic training beyond the bachelor's degree,³³² would likely be better prepared to teach using a clinical format, rather than the academic framework that has developed at ZIALE. Second, a clinical focus at ZIALE would likely provide students with better training for the careers as practitioners, for which the program is meant to groom them.

Finally, though I have discussed it above, it is worth mentioning again that ZIALE should make its testing and grading process transparent. Only by allowing students to view failing exams can ZIALE ensure the accuracy and integrity of its results. If ZIALE's teachers and administrators are confident of the validity of ZIALE's grading process, they have little to lose by opening that process to scrutiny. On the other hand, ZIALE students, who have the highest interest in ensuring the accuracy of their results, and who could learn a great deal from being able to review their failing papers, have much to gain.

There are no universal solutions to the continental shortage of qualified lawyers. Further, even significant increases in the size of the African bar would not be a panacea for the barriers Africans have faced in accessing legal assistance. In fact, African lawyers have often been opponents of innovative proposals for increasing access to justice that they have seen as undermining their professional monopoly on dispensation of legal expertise. Nonetheless, lawyers are crucial to the adjudication of complex

³³¹ Currently, ZIALE does not use teaching evaluations or have any mechanism to monitor the teaching of its instructors. Interview with Palan Mulonda, *supra* note 31.

³³² *Id.*

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civil claims and serious criminal matters and, moreover, to establishing and maintaining societies that function based on the rule of law, and their numbers are sorely lacking across the continent. As documented in this Article, many of the problems that have hindered growth of the Zambian legal profession are nearly ubiquitous throughout sub-Saharan Africa. Thus, it is likely that some of the reforms I have recommended to help mitigate the effects of the scarcity of Zambian lawyers and to stimulate admission of new lawyers would benefit other countries facing similar crises. Ultimately, if Zambia's relevant institutions adopt these reforms, they will increase access to justice in the country, and Zambia's improved system could serve as a model for the rest of the continent and for the world.