

Capacity Assessment of the Access to Justice Institutions

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ACRONYMS

AGO	Accountant General's Office
AM	Appraisal Mission
AtoJ	Access to Justice
CPs	Cooperating Partners
Danida	Danish International Development Assistance
DPP	Director/ate of Public Prosecutions
FMS	Financial Management System
FNDP	Fifth National Development Plan
GGP	Good Governance Programme (Danida)
GoGo	Good Governance Programme (GTZ)
GRZ	Government of the Republic of Zambia
GS	Governance Secretariat
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IFMIS	Integrated Financial Management Information System
LAB	Legal Aid Board
MoFNP	Ministry of Finance and National Planning
MoHA	Ministry of Home Affairs
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
OAG	Office of the Auditor General
PE	Personal Emoluments
PSU	Procurement and Supplies Unit
RDC	Recurrent Developmental Charges
RDE	Royal Danish Embassy
TA	Technical Assistance
VSU	Victim Support Unit
ZNTB	Zambia National Tender Board
ZP	Zambia Police
ZPPA	Zambian Public Procurement Authority
ZPS	Zambia Prison Service

EXECUTIVE SUMMARY

- The current consultancy was commissioned by German Technical Cooperation (GTZ) before joining the Access to Justice Programme (AtoJ) that has been supported by Danish International Development Assistance (Danida) already for several years. The European Commission (EC) might come in as a third partner, through a Delegation Agreement with GTZ. The EC funds would be managed by GTZ as contribution to the Good Governance Programme implemented by GTZ with funding from the German Federal Ministry for Economic Cooperation and Development.
- The consultancy aimed at assessing the financial management capacity of the five beneficiary institutions plus the Governance Secretariat as coordinating body. The expected results included recommendations on steps to be taken to start with the implementation of the new Programme, combining Government's own efforts with well coordinated multi-donor support.

Governance Secretariat

- The Governance Secretariat (GS) was introduced as a separate entity within the Ministry of Justice (MoJ), mandated with the implementation and monitoring of the various elements under the Governance Chapter in the Fifth National Development Plan (FNDP). It reports to Parliamentary Secretary (PS MoJ). It is executing financial management functions for the donor funds of the AtoJ Programme, and other governance programmes. Government of Republic Zambia (GRZ) funding and accounting for GS activities is done through the MoJ accounting unit.
- The MoJ procurement process is a bottleneck for the execution of the AtoJ Programme and its set-up has led to serious frictions among the AtoJ institutions. The administrative alignment of the GS does not give it sufficient authority for coordination over the other AtoJ institutions. Although the professional qualification of the GS staff is adequate, the capacity to handle larger turnover of funds is limited.

Directorate of Public Prosecutions

- Although the Directorate of Public Prosecutions (DPP) is a constitutional office, its financial management functions are under the MoJ. Funding is through the MoJ. The DPP does not have an own bank account and therefore also does not maintain a cashbook.
- Since there are no specific financial management functions for the DPP, a separate assessment of its capabilities is not possible. The MoJ officer in charge of the DPP accounts was not available for further verifications.

Legal Aid Board

- The Legal Aid Board (LAB) has been transformed from a Department under the MoJ into a Grant Aided Institution that receives its funding from its parent Ministry. Since January 2008, it is independent from MoJ with respect to its financial management functions.
- Currently, the LAB operates without any financial management policies and guidelines. Procurement anomalies have surfaced recently and led to the suspension of several senior staff members. Because of these developments, a comprehensive assessment could not be done.

Judiciary

- Since 1997, the Judiciary is an independent Government institution. It receives its funding directly from Ministry of Finance and National Planning (MoFNP) and is also entitled to get external funding. Among the Justice institutions, it has received the most

substantial direct funding from donors. In the last two years, the recruitment of staff for accounting, procurement, and internal control has been done by the institution itself.

- Weaknesses in the cashbook management of GRZ funds have been found with respect to delays in bank reconciliation statements. The past Auditor General's reports have cited a number of public finance management issues in the Judiciary. However, the fraud issues raised in the 2007 report have in the meanwhile been dealt with. With the own recruitment of staff, the financial management functions have been strengthened.

Police

- Police is technically a Department under the Ministry of Home Affairs, but it receives its funding directly from the MoFNP. The AtoJ Programme has so far mainly concentrated its support within the Police to the Victim Support Unit (VSU) although efforts have been made to involve the Police in general. The public finance management functions of the Victim Support Unit are handled by the accounting unit of the police, with a desk officer responsible for the AtoJ Programme. All procurements etc. are done by GS.
- The Police was mentioned in the Auditor General's report 2007 with some serious flaws in procurements. Until today, these issues have not been fully clarified. The weakness is with respect to internal audit, where there is only one person, although the establishment would foresee more staff. Most payments are preaudited. However in the absence of the internal auditor, payments are allowed to be made and post audited. Most commercial bank accounts are not reconciled especially Recurrent Developmental Charges (RDCs) and salaries, because of the volume of payments. Only Bank of Zambia accounts are regularly updated.

Prison Services

- Prison Services are a Department under the Ministry of Home Affairs, but also receive their funding directly from MoFNP. They have qualified own staff for public finance management functions. They use Sun System accounting package. They also have experience with donor funds which they handled before (Rehab. of Prison Services under Prison Reforms). They have been audited by donor appointed auditors as well as the Office of the Auditor General (OAG), with positive results.
- Audit reports show that they have robust accounting systems in place. Internal control is also strong and they maintain updated accounting records. All payments are preaudited by making use of their own qualified internal audit staff. Their procurement for project funded goods and services is done by the Procurement and Supplies Unit (PSU), on the basis of agreed work plans.

General observations and conclusions

- Although being summarized in the Governance Chapter of the current FNDP as the Administration of Justice priority area, the management structure of the current AtoJ Programme appears largely to follow a donor perception of a functioning judicial system. While this has helped to stimulate cooperation between the different actors during the initial phase of the programme, there is no formal institutional link on the Zambian side.
- The cross-sectoral definition of the outputs under the current programme inhibits ownership and absorption into Government operations (no institutional sustainability).
- The fact that the Governance Secretariat is – unlike in many other countries - embedded in the Government structure and is to a large extent funded through Government funds is certainly a strong point. However, its administrative placement below Department level does not provide for sufficient authority to act as a coordinating body.
- The AtoJ Programme falls under PS (Legal), while procurements are under PS (Admin), leading to serious frictions and delays in procurement.

General findings

- There have been a number of improvements with respect to public finance management in the AtoJ institutions.
- However, there are still a number of shortcomings and capacity constraints with respect to the handling of funds.
- In general, a bundling and channeling of donor funds in parallel to GRZ funds, and synchronized with the GRZ funding modalities, seems to be the prudent interim approach until a full sector budget support approach will be feasible. At the moment, a channeling of earmarked donor funds through the Government's central treasury account to a variety of AtoJ institutions does not seem to be feasible.
- However, support modalities to the different actors have to be adjusted in line with the detailed analysis of the different institutions.

Recommendations: Structure

- In order to enhance the institutional sustainability of the Programme beyond the lifespan of donor funding, it is recommended to realign the outputs with the beneficiary institutions. Each institution should take the implementation responsibility for one output, which is derived out of their particular mandate, as a component of the Programme. The output statement should be phrased in terms of improved services provided by the responsible institution.
- Because of the GS' general weakness with respect to its coordinating authority outlined above it may be superior to reduce the coordinating burden of the Secretariat in line with such a decentralization approach. Only communication, cooperation, and coordination, together with overall programme management may remain as one cross-cutting output with the GS.
- In view of the remaining functions, the GS seems to be adequately placed within Government and should continue to handle the remaining coordination tasks (3 Cs) of the AtoJ Programme. It should remain the only cross-sectoral Secretariat within Justice. With a reduction in tasks it does not seem to be sensible to separate the remaining AtoJ coordinating functions from other Governance functions currently handled by the Secretariat.
- However, in order to fulfill its 3 Cs functions, it may still have to be strengthened with respect to public finance management and monitoring know-how. This aspect may be contributed through a Technical Assistance (TA) position that would extend its financial advisory services beyond accounting and GS affairs, thereby also benefitting the other institutions.

Recommendations: Budgeting

- The AtoJ budget should be based on an annual work plan that is to be done separately for each of the beneficiary institutions and should include both, Government and donor funding.
- This overall budget is then to be included in the Yellow Book.
- Donor funding and releases should be synchronized with the GRZ budgeting calendar.
- AtoJ Programme has to give indicative ceilings to the institutions by August 2009, for the 2010 budget.
- The final endorsement of the donor allocations are given by the SC, but the consolidated budget is then to be presented for Parliamentary scrutiny.

Recommendations: Funding

- The administration of funds should be decentralized as much as possible.
- Each institution should open a separate bank account for the additional AtoJ donor funds.

- Funding should be channeled to the respective account on a quarterly basis, according to quarterly profiles, which are to be based on the approved annual budget and workplan.
- The replenishment of funds should be restricted to the volume of previous justified expenses.
- Budget Office should be informed about the release of funds, in order to increase the transparency of the budget process.

Recommendations: Reporting

- For the three major institutions outside MoJ, there should be a monthly report on activities and expenditure to the expanded GS, which should be as much as possible, a copy of the routine Government reports.
- As long as external assistance is still required because of limited own capacity, the reporting for the two AtoJ institutions within MoJ (i.e. the DDP and the Legal Aid Board) should be facilitated by the GS, in cooperation with the accounting unit in MoJ.
- The GS consolidates the reports of the AtoJ institutions on a quarterly basis, to be presented to the SC. Replenishments of funds will be done on the basis of the SC deliberations on these reports.

Recommendations: Procurement and Controls

- The authorization and procurement processes should be consequently done through the Government systems as applicable for the respective institutions. This means that at present, a combination of procurement by the institutions and by Zambian Public Procurement Authority (ZPPA), depending on the threshold would be followed. The implementation of the new GRZ Procurement Regulations, which will be phased in over the next two years, will then result in all procurement being undertaken by the relevant institutions, with only monitoring and follow up by ZPPA. This supervision will ensure that the tender procedures and standards as set by ZPPA are followed transparently and objectively.
- The annual audit of the accounts should be done for each institution by the Auditor General, at the same time for Government and donor funds.
- The control function of the Governance Secretariat is thereby limited to verifying the quarterly reports, where budget execution and adherence to the work programme is checked before a new tranche of donor funding to the donor accounts of the AtoJ Programme is endorsed and approved by the Steering Committee.

Recommendations: Technical Assistance

- The Danish Technical Assistance (TA) is considered highly valuable to provide content matter advice to all AtoJ institutions.
- Additional TA needs are seen with respect to public finance management and planning, monitoring, and reporting. For this, two advisory positions may be foreseen at the level of the GS that can be provided by GTZ. Their services should be made available to all AtoJ institutions upon demand. This would bring the total number of TA personnel for the Programme to three advisors, which does not seem to be too much considering the expected total funding level and the diversity of the institutions involved. Whether these personnel should be recruited internationally or locally is another question that will also depend on the qualifications that are locally available and the added value for the Programme.
- The additional TA support should also help to ensure the linkages and synergies among and between the participating institutions, and also maintain close links to relevant civil society organisations.
- In addition, short-term assignments should be foreseen that can be accessed by all AtoJ institutions upon request, and for all aspects required. These needs will have to be

defined with detailed terms of reference. This should be done in dedicated planning sessions that should be conducted together with the relevant institutions starting later this year.

1 Introduction

The Access to Justice (AtoJ) Programme started with Danida/Danish support as a Government-led project about ten years ago. From the start the focus of the Programme has been on the criminal justice system. It was the perception at the time that the shortcomings in this subsector had the worst impact on poor and vulnerable populations with respect to the delivery of justice. The bilateral financing agreement for the current Danida supported AtoJ Programme was signed in September 2005, with actual implementation and release of funds only starting in early 2007. Prior to that, institutions in the criminal justice sector were supported on an individual and ad hoc basis in line with a traditional project support approach. From early 2006 to early 2007 the AtoJ Programme was expanded to include Police (in addition to VSU) and Prisons, and now includes six different institutions, including the Governance Secretariat (GS) which was introduced as a special office attached to the Ministry of Justice in 2006. Also, new management structures including the Technical Committee and the Steering Committee were put in place, supported by Planning Units (PUs) in each of the institutions. With this, the Programme was substantially reshaped and fine tuned in line with the Fifth National Development Plan (FNDP). The Danida-supported Programme is now entering into its second phase, with a total amount of 20m USD donor funds earmarked for the period 2009 – 2012.

The German Federal Ministry of Economic Cooperation and Development, through the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) as its implementing agency for technical cooperation, intends to join the Programme as a new donor, with an initial commitment of about 1.5m EUR. In addition, a contribution of the European Commission to the Zambian Access to Justice Programme of 6m EUR is foreseen to be channeled through a Delegation Agreement with GTZ.

At the moment, the Danish contribution to the AtoJ Programme is transferred to a special account which the GS is managing, following its own procedures. The Government contribution is channeled through the normal budget allocation process to the different beneficiary institutions. However, as until the current budget, the Government's Yellow Book on Revenue and Budget Estimates only lists the own Government contributions to the Programme, while the donor contribution is not listed.

1.1 Objectives of the consultancy

The AtoJ is currently operating with a budget ceiling of 20 Mill. US \$. Following extensive lobbying by the AtoJ a total budget of 30 Mill. US \$ for the envisioned expanded AtoJ can be accessed to cover current shortfalls in this budget ceiling. In order to clarify how the support would work for phase II of the programme and to ensure that resources are used in the most effective manner, the new donors require a more detailed analysis and Capacity Assessment (CA) of the Governance Secretariat and the five Zambian Access to Justice institutions. This is considered part of the process to define the modalities for joining the AtoJ Programme through a multi-donor approach for the strengthening of the justice sector in Zambia.

The European Commission (EC) considers channeling its contribution to the Programme through a delegated cooperation agreement with the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) as implementing partner. GTZ will handle the German and the EC delegated cooperation contribution under its ongoing Good Governance Programme (GoGo). With view to the administrative process required to secure the contribution of all partners, it is expected that the additional funding and TA services will only be available in 2010.

According to the Terms of References (ToR), the purpose of the capacity assessment is to scrutinise the managerial, administrative, financial and reporting, and IT based capacities of the five Access to Justice Institutions plus the Governance Secretariat. Emphasis is to be put on the

present status, gaps and needs for improvement, including an outline of possible TA support. A particular focus is to be placed on the procedures, formats and practices according to government's regulations and standard operation procedures. Furthermore the current and Government procedures and practices are to be compared with GTZ's standard operation procedures and requirements for a delegated cooperation agreement. In addition, the instruments of the European Commission for compliance assessments for decentralized management are to be considered as "added piece of information".

In line with this, the overall objectives of the mission have been phrased as:

1. "To carry out a fiduciary risk assessment and financial management capacity assessment and recommendations for improvements for the five beneficiary institutions and the GS. The mission is expected to make recommendations for strengthening the institutional capacity including options to implement devolved functions as implied in the AJP and vis-à-vis the GS.
2. To identify TA needs in the six institutions for improving their managerial and financial capacity in implementing their contribution to the AJP. This assessment should be used as a basis to determine the need for and best possible use of three categories of technical assistance:
 - i. TA that currently exists within the AJP provided by DANIDA, and if necessary and assessable within this exercise, further long- and short-term TA to be provided by DANIDA.
 - ii. Long term TA deemed necessary for the institutional and financial management capacity strengthening of the GS and the five institutions, to be provided by GTZ.
 - iii. Other long and short term TA and expert support that may be required during implementation, which could be paid for out of the basket."

In line with these objectives a list of detailed tasks has been tabled. These are documented in the detailed ToR attached as Annex 1.

1.2 Methodology

The mission consisted of three consultants contracted by GTZ: Dr. Thomas Krimmel and Mr. Dick Chellah from Munich Advisors Group, and Henry Kabinga, contracted as an individual consultant. In addition, GTZ staff members participated in some of the meetings with the beneficiary institutions and shared their own assessments with respect to the compatibility of the findings with GTZ procedures and regulations.

The assessment is furthermore based on a number of secondary materials. Of particular importance among these is an earlier consultancy commissioned by DANIDA in September 2006 on the financial management and progress monitoring and reporting capacity assessment of the six institutions, in which one of the consultants, Henry Kabinga, was a team member.¹ With this study being available as a baseline, the current assessment has been able to review and compare the financial management performance in the five institutions.² Another study in 2008 initiated by DANIDA addressed options for a suitable funding mechanism.³ This study suggested to create a basket fund in the Governance Secretariat, as the best option for a support modality for the Programme.

¹ COWI: Consultancy to Assess the Financial Management Capacity of Partner Institutions, Under the Access to Justice for All Component, Final Report, commissioned by DANIDA, September 2006.

² This report, however, did not cover the Police.

³ Assessment of Selected Designs and Proposal for the Establishment of a Basket Funding Mechanism, 30 June 2008, commissioned by the Danish Embassy and conducted by NCG of Denmark.

The mission started officially with a meeting of the technical working group on 15th May 2009, where the consultants presented their preliminary work plan. At that occasion, with all liaison persons of the respective agencies present, the first meetings with the beneficiary institutions were set up, in particular with the decision making level / controlling officers.

After these initial meetings, the consultants split up and went in two rounds into more detailed interviews with the technical staff members of the institutions, also viewing through a number of case study materials and documents. The interviews were conducted with personnel from the following units:

- Accounts
- Procurement and Supply Unit
- Internal Audit
- Human Resources

The earlier questionnaire used by the COWI study commissioned by DANIDA in 2006 was taken as a reference and baseline for comparison. It was updated and extended, and supplemented by questions taken from the EC questionnaire for pooled funding under the 10th EDF.⁴ As a summary, the combined results of the reviews of financial management practices of the different institutions have been tabled in this EC questionnaire, as documented in the Annex.

In addition to the AtoJ institutions, interviews were conducted with a number of other stakeholders, including:

- Permanent Secretary, Budget and Economic Affairs, Ministry of Finance and National Planning;
- Office of the Accountant General, Ministry of Finance and National Planning;
- Auditor General;
- Delegation of the European Commission.

1.3 Working hypotheses

The fiduciary risk that is to be assessed with the consultancy basically refers to the risk that public funds made available for these institutions are not used for the intended purposes, or do not achieve value for money, and / or are not properly recorded and accounted for. This may be due to a number of factors including lack of capacity, competence or knowledge; bureaucratic inefficiency and / or outright corruption.

It is the expected loss that would result from gaps between generally accepted financial management standards and actual practices in an institution. Residual risk refers to the portion of an original risk or set of risks that remain after mitigating measures have been applied.

Risk factors or weaknesses that might be present include the following:

1. A number of justice institutions are highly centralized and authoritarian in their modus operandi, for instance the Police, Prisons and possibly, although to some lesser extent, the Judiciary. This results in absolute authority being vested in one individual such as the Inspector General or "command." The risk of such arrangements is the lack of proper internal checks which could easily result in putting at risk funds disbursed if the command structure of the institution is not fulfilling their fiduciary responsibilities.

⁴ European Commission, 2007: Questionnaire for the Assessment of Compliance with Criteria for Fully Decentralized Management (pooled funds), = Annex 2 to ToR for an assessment concerning Decentralized Management; version June 2007.

2. Cash ceilings in the budget process may not take account of actual needs of the recipient institution.
3. Inadequate monthly cash releases may be below the approved budgets and force the institutions to divert monies received for other purposes. This may then result in considerable divergence between the approved resource envelope and the allocation of appropriations.
4. Personnel costs (PEs) are a “fixed” element of the budget and the first call on expenditure. Priority setting for the remaining discretionary part of the budget allocations also starts from top. This tends to lead to wasteful spending behaviour on certain elements of running cost (e.g. workshops and allowances), leaving insufficient funds for other running costs and investment.
5. The accounting system still being in use is largely depending on manual operations and is basically outdated. The implementation of a new system that uses the latest “industry standard” software (IFMIS) has fallen seriously behind schedule.
6. Some institutions have too many bank accounts and this can result in facilitation of fraud as control systems may not be able to effectively monitor these.
7. Bank reconciliations tend to be not up to date.
8. Cash forecasting is virtually non-existent.

These hypotheses are to be scrutinized and verified through the consultancy. They are checked against a set of basic principles that might help managing fiduciary risks:

1. Defining a ring fencing financial management system that ensures that funds are separately audited by an independent auditor;
2. Strengthening the internal and external control systems;
3. Carrying out periodic risk assessments and ensuring that these are used for monitoring progress over time;
4. Establishing a systematic monitoring process;
5. Engaging in constant dialogue with the partners to address the weaknesses discovered in the system;
6. Introduce capacity building measures in the institutions.

The consultancy will have to investigate the appropriateness of Technical Assistance (TA) measures to implement these principles. The question is whether TA is needed in all the institutions by means of a permanent advisor who is well acquainted with all aspects of financial management, or whether TA should rather be made available through centrally placed advisory staff. Capacity building may also include the recruitment of qualified staff in finance in these institutions.

2 Overview of the Access to Justice Programme and the roles of the stakeholder institutions

2.1 The Access to Justice Programme

Prior to the formulation of the Fifth National Development Plan (FNDP) of the Government of the Republic of Zambia (GRZ), national policies regarding the justice sector were found in the National Capacity Building Programme for Good Governance in Zambia document, which was endorsed by Cabinet in 2000. This document pinpointed a major weakness in all justice institutions as being the lack of institutional linkages and lack of effective coordination resulting in “*unnecessary overlap, rivalry, wastage and ineffectiveness in the administration of justice*”.⁵

⁵ National Capacity Building Programme for Good Governance in Zambia, April 1999.

Until fairly recently, the justice sector did not have a significant level of donor presence with the Scandinavian countries being the most active. The Danish Embassy has more recently taken the lead in supporting the justice sector in general and the Access to Justice Programme in particular. Support began in 2000 and consisted of a number of pilot projects and studies funded through the Local Grant Authority of the embassy. Various other initiatives by the embassy resulted in a draft programme document presented in 2004 after which the Access to Justice Programme was subsequently redefined as a component and integrated within Danida's overall thematic programme of Good Governance and Democratization.

Under the Fifth National Development Plan, the Access to Justice Programme (AtoJ) is one of the priority areas of the Governance Chapter. The revised programme document of the Access to Justice Programme states *"the inclusion of this priority area within the Governance chapter of the FNDP has assisted in establishing the foundation for a move towards sector budget support through basket funding and general budget support in a longer term perspective"*⁶

2.2 Aims and objectives

The AtoJ Programme Document defines the overall objective as *"easier access to justice for all, including the poor and vulnerable, women and children"*. The immediate objective has been defined as *"improved performance of their mandates by justice agencies and institutions"*.

The outputs of the AtoJ which are seen as relevant and necessary to achieve the immediate objective were defined as follows:

1. Improved Communication, Cooperation and Coordination among Justice Institutions and other Stakeholders
2. Increased competence and motivation of Personnel in Justice Agencies and Institutions
3. Improved Accessibility of Justice Agencies and Institutions, especially by the poor and vulnerable, Women and Children
4. Improved Legislative Process and Policy Framework affecting the Administration of Justice
5. Increased Public Awareness of Human and Civil Rights and of Judicial Procedures and Remedies
6. Improved Record keeping and Information Management within and across Justice Agencies and Institutions
7. Programme Management

2.3 Policy makers / implementing agencies

The Access to Justice Programme has identified five key justice institutions through which support to the justice sector will be channeled. These are the Judiciary as a separate arm of government; the Police and Prisons Services which operate under the Ministry of Home Affairs; the Directorate of Public Prosecutions (DPP) and the Legal Aid Board (LAB) operating under the Ministry of Justice. The Legal Aid Board was until recently, when it was transformed into a corporate entity, known as the Legal Aid Department (LAD) of the MoJ. It is now a grant aided institution operating under the Justice Ministry. To administer and manage the AtoJ as part of the Governance Chapter of the FNDP, a Governance Secretariat (GS) has been established in the MoJ making a total of six implementing institutions.

2.3.1 The Steering Committee

The Steering Committee (SC) sets policy direction and decision making. It comprises the heads of the five key criminal justice agencies and the two Permanent Secretaries (PS's) at the MoJ

⁶ Access to Justice Programme Document 2009-2011, Final Draft May 2008.

and MoHA. The SC meets quarterly and has a rotational chairmanship between the justice institutions and the two PS's.

2.3.2 The Technical Committee

The AtoJ Technical Committee has the responsibility of planning, implementation as well as monitoring and evaluation of the AtoJ activities. It comprises Task Managers from the five institutions. It meets fortnightly and / or when need arises.

2.3.3 The Planning Units (PU's)

To ensure institutional linkages between the TCs and the AtoJ institutions, Planning Units made up of representatives from key departments such as finance, procurement, human resource as well as the core business areas of the institutions have been set up.

2.3.4 The Governance Secretariat

Initially, the Governance Secretariat (GS) was established as a project to oversee, coordinate and monitor initiatives relating to improved governance in Zambia. It has been incorporated in the Ministry of Justice and fully operates under the ministry structures. The GS also functions as secretariat for the Governance Sector Advisory Group (GSAG) and the Access to Justice (AtoJ) Programme, including the technical committees under both groups. In addition the GS is the technical arm of the Public Sector Reform Programme Steering Committee on issues relating to overall governance coordination. Its mandate has progressively grown to a point where it now coordinates the Africa Peer Review Mechanism (APRM), an initiative that had hitherto been under the Ministry of Foreign Affairs (MoFA) but has now been moved to the MoJ.

The GS Coordinator, the highest position in the office, reports directly to the Permanent Secretary in that Ministry. AtoJ activities are coordinated by an Access to Justice Specialist who receives technical support from an AtoJ Adviser funded by Danida. The Governance Secretariat also currently oversees the accountancy functions of all AtoJ activities which are done by a Finance Officer paid through Danida funding and working through established government structures at the MoJ.

2.4 Beneficiaries

2.4.1 Prison Service

Through an Act of Parliament, the Zambia Prison Service (ZPS) has been made responsible for the provision and maintenance of custodial and correctional services to the inmates. While exercising the above function, the ZPS has established a number of productive enterprises which have also made significant contributions to the industrial and agricultural production in the country.

The Zambia Prison Services (ZPS) is technically operating as a Department under the Ministry of Home Affairs, reporting to the Permanent Secretary. Nevertheless, it receives its funding directly from Budget Office, Ministry of Finance and National Planning, in line with their approved budget, just like a Government Ministry, or Head. However, in addition to the central treasury funding, and to the income earned from its productive enterprises, it was established that the ZPS can have other sources of funding, specifically for foreign funded projects.

2.4.2 Police

Zambia Police (ZP) is also mandated through an Act of Parliament to perform the following functions, among others:

- protect life and property
- preserve law and order
- detect and prevent crime

An assessment was carried out at Police headquarters to determine the suitability and integrity of the environment, accounting, internal controls and procurement processes in the management of financial resources.

Similarly to Prison Services, Zambia Police is a Department under the Ministry of Home Affairs, which is nevertheless funded directly by the Ministry of Finance and National Planning using the approved budget as a basis. In addition Zambia Police is also receiving some donor support, for example from DANIDA under the AtoJ Programme through the Governance Secretariat (GS). Most of this support is currently earmarked for the Victim Support Unit (VSU). The funds for this activity are administered by the Governance Secretariat who processes all payments on the basis of requests from the Victim Support Unit desk at Zambia Police.

However at present, Zambia Police has no other direct donor support apart from the above mentioned project. Consequently, the assessment of the fiduciary risk was mainly based on the management of financial resources that is received from the Ministry of Finance and National Planning.

2.4.3 Director of Public Prosecutions

The Director of Public Prosecutions (DPP's) office is established under Article 56 of the Constitution of Zambia. It is not regulated by an Act of Parliament and the DPP performs his functions of prosecutions through institutions not under his control, such as the Police, the Anti Corruption Commission and the Drug Enforcement Commission. Administrative functions are maintained by the Ministry of Justice which has seconded officers to the DPP.

2.4.4 Legal Aid Board

Until Act 19 of 2005, which transformed it into a corporate entity, the Board existed as a department in the Ministry of Justice and all financial management functions were undertaken at ministry headquarters. It began operating as a Board in January 2008. There are as yet no policies either financial or otherwise and a strategic plan is still at draft level. There is a high level of staff turnover due to relatively uncompetitive conditions of service. Therefore, their core staffs, lawyers, tend to use the institution merely to acquire experience before leaving for greener pastures.

2.4.5 Judiciary

The Judiciary as an institution is established by the Constitution of Zambia as a separate and independent arm of government. Prior to 1997, it fell under the then Ministry of Legal Affairs, now the Ministry of Justice, bringing into question its autonomy vis-à-vis the Executive. It consists of the Supreme Court, the High and Industrial Relations Courts, the subordinate or Magistrate courts and local courts. Its administration is guided by chapter 24 of the Laws of Zambia; the Judicature Administration Act, which provides for the administration of the courts and confers power of staff appointments upon the Judicial Service Commission.

2.5 Other stakeholders

2.5.1 Denmark / Danish TA

Denmark has been supporting good governance initiatives in Zambia for several years. Starting out with support through minor projects, this has grown since 2005 to support to phase 1 of the Good Governance and Democratization Programme which officially came to an end on 31 May 2009. Further support is envisaged for phase II of the programme which is based on Zambia's Fifth National Development Plan (FNDP) for 2006-2010. The proposed GGP II has four components two of which, Facilitation and Coordination of Governance Initiatives and the Access to Justice, are supported through the Governance Secretariat housed in the Ministry of Justice. Taking into account the interest other Cooperating Partners (CPs) have shown in the AtoJ, Danida foresees a basket funding arrangement for this component and in late 2008, commissioned a study which looked at various modalities for such an arrangement.

The Programme Document for the AtoJ for 2009-2011 has been finalized with increased activities over phase 1, bringing the combined budget into the range of 20 Million US \$.

2.5.2 Germany / GTZ Germany

Germany is in the lead in the water sector and in decentralization, with GTZ in both cases having a leading role in coordinating the donor side. The Good Governance Programme is the third pillar of German cooperation with Zambia, and the German engagement in the AtoJ Programme would fall under this realm. This structure provides for the smooth integration of an interface between the criminal justice institutions and civil society.

The Federal Ministry for Economic Cooperation and Development (BMZ) differs from other government bodies in that it does not have a typical institutional sub-structure. Projects are executed by different implementing organisations, commissioned by the Ministry. GTZ is the technical cooperation agency implementing projects in partner countries that are funded under the umbrella of official German Development Cooperation. Consequently, GTZ's most prominent mode of aid delivery is Capacity Development (CD) including institution building, rather than the mere funding of partner projects. Financial cooperation, such as the Poverty Reduction Budget Support (PRBS), is dealt with by the Kreditanstalt für Wiederaufbau (KfW), which also maintains an office in Lusaka.

This specific characteristic of German Development Cooperation influences the way GTZ can act and deliver its services. Typically, GTZ-supported projects are between 1 and 5 million Euros over a standard project period of three years, and characterised by CD inputs that typically account for about half of the project volume. CD has been one of GTZ's core service areas ever since the organisation was founded. While TA is focused on immediate instrumental and capacity gaps, GTZ defines CD in a broader context including the improvement of political and institutional frameworks to create an enabling environment for developing existing and new capacities.

2.5.3 Delegation of the European Commission

The European Commission, under the 10th EDF funding, has earmarked an amount of 6m EUR to contribute to the AtoJ Programme. The foreseen implementation mechanism is "*indirect centralized management with GTZ*", whereby GTZ would take over the implementation responsibility for the EC contribution. The EC Delegation Agreement to GTZ should mainly be used to enter financing agreements with the GS and the five AtoJ institutions responsible for implementing defined activities under the overall programme. The talks between the parties have already reached an advanced stage, and the EC Delegation in Zambia has just submitted an Action Fiche on this contribution, to be considered in Brussels. A delegation agreement would then be signed between GTZ and the EC Delegation.

3 Financial management performance and capacity assessment

The following section presents the findings of the detailed analysis of the different AtoJ institutions with respect to their financial management performance.

3.1 Governance Secretariat

The financial management functions of the GS are under the control of a Finance Officer who is currently paid through Royal Danish Embassy funding. The financial management functions performed by the finance officer are however largely limited to the two components of Danish assistance namely Facilitation and Coordination of Governance Initiatives and the Access to Justice.

3.1.1 Strategic plans, work plans, operational plans

The Governance Secretariat does not have a strategic plan as an institution. Work plans and budgets for its administration are done within the Danida component of Facilitation and Coordination of Governance Initiatives.

3.1.2 The budgeting process

The GS administrative budget is incorporated within the outputs of the Facilitation and Coordination of Governance Initiatives of Component A of Danida's Good Governance Programme. The budget process involves a setting of priorities by GS specialists with assistance of a Danida Technical Adviser who is based within the MoJ and who consolidates the same. This budget incorporates both donor and GRZ funding.

Budgeting for AtoJ activities is coordinated by the Technical Adviser housed in the Judiciary and working with the AtoJ Technical Committee. The institutions set their priorities which are harmonised in a work plan that sets outputs from a sector perspective. These plans together with the budget are then submitted to the Steering Committee for approval. Funding from the RDE to both components is by way of bank transfer into a Zambia National Commercial Bank (ZANACO) account from where payments are made in line with approved work plan activities. Two panels of signatories are in place with one panel consisting of GS staff and the other of MoJ staff. Danida funding appears not to distinguish between the two components and this has in the past led to some lack of clarity on the part of the Finance Officer as to which component is getting what funding. This mingling of funds between components is clearly an internal control weakness, particularly considering that the Access to Justice Funds alone are utilized for activities across five justice sector institutions.

3.1.3 Accounting and cash books

All Access to Justice payments are passed through the common commercial bank account. A Pastel "Partner" basic accounting package was installed sometime in 2007 for the processing of transactions. This package has however remained largely unutilized in part because of a poorly designed set up and implementation procedure, but also since it is mainly designed as a small business solution and less appropriate for a donor funded, or Government programme. The Pastel accounting package is very widely used in Zambia. Its usage is largely in industry and commerce as it is tailored and structured for standard trading organisations and the technical expertise and support in Zambia tends to be in these areas. For the kind of accounting functions foreseen for the AtoJ Programme, a more versatile package which adapts easily to specific reporting requirements and which can incorporate six institutions should be sourced. In setting up Pastel at the GS, the service provider worked in large part with the MOJ IT specialist but did not involve the users of the system sufficiently with the result that it remains largely inoperable.

The foregoing has meant that the cashbook is written via a Microsoft Excel spreadsheet. In theory, the cashbook is written monthly as are bank reconciliation statements. In practice however, it is common for these to be done towards the end of each quarter when the report to the Royal Danish Embassy (RDE) is due. Pressure of work has often been cited as the reason for the delays. The bank reconciliation statements and the cashbooks are accurately done and reconcile with the quarterly report with no major issues of concern detected. However, it should be noted that Excel does not provide for auditing assurance according to internationally accepted accounting standards.

3.1.4 Procurement procedures

The procurement for the whole AtoJ Programme is managed by the Governance Secretariat, and follows the procurement procedures under the MoJ. For proceedings it relies on the Ministerial Tender Committee of the MoJ, chaired by the PS (Administrative Affairs) who was formerly heading the AtoJ Programme, before the splitting of the PS functions in the MoJ. According to the observations of the consultants, the Government procurement procedures are followed in general, however, the Committee only meets in relatively large intervals, to the detriment of the AtoJ Programme.

Therefore, major concerns by partner institutions in particular those outside the MoJ have been expressed regarding delays in processing payments for planned activities. While this concern is valid, the perception that the GS causes the delays is largely inaccurate. The delays are caused largely as a result of the use of MoJ institutional structures for all procurements. In keeping with government procedures, the MoJ Permanent Secretary, Procurement Unit and Ministerial Tender Committee are charged with the responsibility of authorization for all AtoJ expenditure. It is within this structure as well as communication problems between the partner institutions and the GS that delays are experienced with the result that work plans are not timely executed.

Recent cases demonstrate this point: There is an ongoing activity of rehabilitation of local courts in various districts which is being executed by the Judiciary. Work was tendered and commissioned through government procedures at provincial level. This is in line with government procurement procedures that stipulate that works undertaken at provincial level should be done through the provincial tender committee. Upon completion of works, the Judiciary had to pay the contractors, who put pressure to receive their outstanding money, out of its RDC funding pending refund from the GS. However, considerable delays at the MoJ have been experienced with the result that the Judiciary has had to forgo other planned expenditure. While GS claims that the full documentation of tender processes at the Provincial levels have still not yet been properly submitted, Judiciary believes that all documents had been handed over a long time ago and are being deliberately kept on hold by the GS. Another example of this problem relates to the AtoJ Situation Analysis where the award of contract was approved by the SC in a meeting of 26 March subject to final authorization by the MoJ Tender Committee. This has not been forthcoming three and half months down the line.

3.1.5 Financial reporting

Currently, the GS reports to the Danish Embassy on a quarterly basis. The quarterly report comprises a statement indicating an opening balance of cash, any disbursements made by RDE, payments according to the major outputs, and a closing balance which is reconciled to the bank statement (see Annex). As stated earlier, the disbursements do not distinguish between the Facilitation and Coordination of Governance Initiatives component and the Access to Justice component. This is not a most desirable set up especially with the higher cash flows that are anticipated for the AtoJ, which should ideally have its own bank account.

Some concern has been expressed by the RDE that quarterly reports have at times not been submitted on time and that the narrative report that accompanies the financials could be enhanced in terms of depth. The quarterly financial reports were checked for accuracy and

found to be in order with bank reconciliation statements agreeing with the reported figures. An Appraisal Mission (AM) covering the entire Danish Governance Programme was recently in the country and expressed satisfaction in the GS administration and financial management.

3.1.6 Internal control and external audit and review

The GS is currently not subjected to internal audit review. Under the current administrative structures, internal audit functions should have been undertaken by the MoJ internal auditor as was envisaged when the GS was set up. However, the internal audit department indicated a lack of capacity, or at least that they be paid additionally for such an undertaking. The result is that internal audit functions have not been carried out since the GS was set up.

In line with all government related institutions, the GS was audited by the Office of the Auditor General for the 2007 financial year. In fact for the GS, the audit was done for both, GRZ and donor funds at the same time and presented in a combined audit report. There were no major audit queries raised in that report. The 2008 audit is yet to be done but all documentation for this purpose is available and appears in order, despite the failure to keep records in proper accounting software.

3.1.7 Institutional and human resources capacity

The GS at the moment is adequately staffed for the current levels of operation. The various specialists working with the Danish TAs have the competence and motivation to carry out programme assignments. However the priorities and work load within GS does not always allow for timely implementation of activities.

3.1.8 Assessment of the IT status

The GS is currently well supplied with state of the art computers and internet facilities for its entire technical and financial management staff. However, the accounting package that was installed at the start of 2007 has not performed to expectations and is currently a white elephant. Supplied and installed with the assistance of the ministry's IT specialist, the Pastel accounting package has hardly been utilized. A major weakness is that the system was set up without taking due account of the user needs and involvement. It also appears not to be structurally suitable for the Programme. A decision over its continued existence will need to be made with the possibility that more appropriate accounting software be sourced.

3.1.9 Overall assessment and support needed

The financial management performance of the GS can be assessed as "**moderate**". While the GS handles most tasks sufficiently well, the bottlenecks identified are more of structure and administrative placement. However, the consultants believe that it cannot take on extra responsibilities of administering a basket fund without added capacity. In the support that is being considered for phase II of the AtoJ programme, it will be important to consider funding for an advisory position in financial management. The expert to be fielded would also have to specifically deal with the basket funding, coordination and financial reporting. This position would more or less be at par with the current Finance Officer funded by Danida. Further support would also be needed in the area of planning, monitoring, and reporting.

There is also the need for the introduction of internal audit functions to strengthen internal controls. This does not entail setting up a new portfolio, but rather utilizing existing government structures as was envisaged in the original programme set up. The IT status in terms of financial management such as cashbooks and reports also need to be upgraded from Excel spreadsheets to an appropriate accounting package to be sourced from the market.

3.2 Police

3.2.1 GRZ financial management procedures at Police

Zambia Police Services is implementing the Government commitment control system introduced by the Government in 2001. This programme seeks to control the accumulation of arrears by Ministries, Provinces and Spending Agencies. Before a payment is made, the department that is requesting for the payment fills in the commitment requisition form. This form has three parts, part one contains the instruction for stores or services required in terms of quantity, unit cost descriptions of items and under which authority. This form is then sent to the accounts unit for confirmation of the budget line, availability of funds and commitment. The form is then sent for approval by a high ranking officer who is called Commitment Control Officer (CCO). For the Police Service, the CCO is the Inspector General who is designated with this responsibility. After approval the form is then sent to accounts to raise the payment voucher. After the payment voucher has been raised and signed by the Head of the Accounting Unit, it is sent to the internal audit unit for pre-audit. After pre-audit, the payment is sent to the cheque typist, who types the cheque and the backing sheet. These documents are signed by authorized signatory; one from panel A and the other from panel B. The backing sheet is sent to the commercial bank, kept in the various Banks. All cheques are recorded in the distribution register by the cashier, and distributed accordingly.

3.2.2 The budgeting process

The budgeting process starts with drafting annual budgets for proposed activities based on a preliminary ceiling given to each agency. This first draft is to be presented and consolidated at the latest by August for the subsequent budget year. After Cabinet approval, preliminary figures are then presented as the Green Paper which also includes the rolling MTEF figures for three years to come. Through the subsequent budget hearings process, the budgets for each institution are negotiated for the coming budget year, and are finally presented at budget day in Parliament, for Parliamentary debate and final approval. According to the current constitutional stipulations, budget day is on the last Friday of January in the new budget year, and approval must be reached before April. During the time January to March, Government spending is only possible on the basis of a Presidential Warrant, which does not allow for the start of any major capital project that needs to be approved in the budget. Despite several attempts by Government to expedite the approval process and have the tendering for projects already been done before budget approval, this constitutional restriction has led in the past to serious delays in the implementation of capital projects. After sometimes lengthy tendering procedures, many projects can only be started in the second half of the year, and cannot be completed before the end of the budget year, which leads to other complications in laying over and consolidating multi-year projects. As announced by H.E. President Banda, Government is currently working on an amendment of the constitutional provisions for the budgeting process. Since it is not controversial, Government is hopeful that the budget dates can already be amended for the budget year 2010, having an approved budget in place by the beginning of the year.

In line with the budget process, Zambia Police receives their funding from the Ministry of Finance and National Planning on a monthly basis, based on their quarterly expenditure projection (quarterly profile) submitted to the Ministry of Finance and National Planning through a control account held at the Bank of Zambia. So far, the first quarter only contains PE and basic provisions for Recurrent Developmental Charges (RDCs). The cash book and reconciliations for this account were up-to-date and correctly done.

Payments are made from this account to the mirror account (holding) at a commercial bank. The cashbook and reconciliations for this account was found to be correctly done. However, serious delays were recorded in the cashbook maintenance and reconciliation which was explained with the delays by the commercial bank to produce the bank statements.

3.2.3 Accounting and cash books

Zambia Police accounting records are predominantly manual and these records (ledgers, cash books and other books of prime entry) are maintained for each expenditure type i.e. Personal Emoluments, Recurrent Departmental Charges and Capital. An examination based on the sample revealed that, though all ledgers and cash books are opened, in some cases especially Recurrent Departmental Charges and Salaries, the records are not regularly updated and contain errors. This is attributed to the nature and volumes of transactions related to these types of expenditure.

3.2.4 Fixed assets and procurement procedures

Zambia Police does not maintain a comprehensive assets register. However, as is current practice in most Government institutions, there is a schedule of assets that have been made available to that office, stuck on the wall or office door.

Zambia Police has constituted a procurement committee comprising Heads of Departments to grant authority for purchase of goods and services at a K50,000,000 thresholds. All purchases of goods and services below this amount can be approved by the Inspector General. Only procurements above this threshold have to go through a tendering process chaired by the Zambia Public Procurement Authority (ZPPA), formerly Zambia National Tender Board (ZNTB).

The Auditor General's report of 2007 highlighted some procurement issues with respect to vehicle procurements that Zambia Police is still requested to respond to.⁷ By the time of writing this report, these issues were not finally solved, according to the information obtained by the consultants.

3.2.5 Financial reporting

Zambia Police quarterly and annually prepares a financial report (Statement C) which compares the budget provision and expenditure. As with all Government heads the Statement C is regularly published on the website of the Ministry of Finance and National Planning. The annual statement is audited by the Auditor General who gives an opinion.

3.2.6 Internal control and external audit and review

All payments are pre-audited by the internal audit unit before cheques are issued and distributed. However, due to a shortage of manpower (only one internal auditor), and especially in the absence of the internal auditor, some payments are processed without being pre-audited and are later only post audited internally.

All procured goods are delivered to the Procurement Unit which records them in a Stores Register. The goods are issued on request to the end users and are recorded in the Stores Issued Register. However, an examination of the process on test basis revealed that the link between end users and procurement is not strong. For example the purchases that are done by the Governance Secretariat on behalf of Victim Support Unit are not captured if the desk officer does not inform the procurement unit.

Zambia Police issues receipts for all revenue received and deposited in the central treasury account at Bank of Zambia. Revenue returns are submitted to Ministry of Finance and National Planning. However, the link between collecting agents and Ministry of Finance and National Planning is not strong. The amounts forwarded to the treasury account are not reconciled through a reference to the source documents.

⁷ Office of the Auditor General (OAG) Report, 2007, p. 35.

3.2.7 Institutional and human resources capacity

The number of transactions at Police has facilitated that a certain level of public finance management capacity has been achieved by the service. With certain provisions introduced, the Police is considered capable of handling and managing additional funding. However, some serious weaknesses still remain to be addressed. But with the type of operations Police is handling, it is doubtful that external assistance is feasible to be placed within the institution. Capacity building measures will have to be defined to be handled through other mechanisms.

3.2.8 Assessment of the IT status

The information that is captured on the banking sheet is keyed in the stand alone computer system called Financial Management System (FMS), which has been programmed by using Microsoft Access. This is subsequently used to prepare the financial report, which is forwarded to Accountant General for consolidation. Usually, Police financial reports are forwarded with little or no delay. It is expected that the implementation of IFMIS will facilitate and speed up this process. While waiting for this to happen, a separate support with respect to the IT facilities for public finance management functions at Police is not considered helpful, since it may create overlaps.

3.2.9 Overall assessment

In general, Zambia Police has adequate rules, regulations and procedures in place to manage financial resources made available to them. However, the weaknesses encountered still require to be addressed appropriately, in particular with respect to internal control mechanisms. The overall assessment of risk can be put as “moderate”.

The needs for support that can be identified with respect to financial management include backstopping services for reporting, and support for the introduction of appropriate internal control mechanisms, for procurement as well as for accounting functions. For the Police, it is also important to establish a meaningful indicator system that starts from capturing the quantity and quality of actual services provided that are improved through the AtoJ Programme, and from there extends to measuring the utilization and appreciation of the services provided and the benefit that can be attributed to this utilization for the Zambian people.

3.3 Prison Services

3.3.1 GRZ financial management procedures at Prison Services

Zambia Prisons Services is also implementing the commitment control system introduced by the Government in 2001. The basic system works in the same way as for Police, described above.

3.3.2 The budgeting process and donor funding

The Zambia Prison Services (ZPS) is funded like any other Government institution by Ministry of Finance and National Planning in relation to their approved budget. The funding profiles are usually done at 1/12th of the annual budget requested each month. Normally, releases from the Treasury also follow this routine. However, last year’s funding did not include the December tranche, which means that only 11/12th of the approved annual budget were actually disbursed. In the absence of a more accurate funding profile, this might have been just a measure of prudent treasury management, as a reaction to the observation that the Prison Services might not have used up all funds received so far.

In addition to the central treasury funding, it was established that the Zambia Prison Service can also access other sources of funding, specifically for donor funded projects. Under the Zambia

Prisons Rehabilitation Project, which was part of the Zambia Prisons Reform Programme, Zambia Prison Services received funding from the Royal Danish Embassy/Danida. Danida previously also supported the Katombora Reformatory School in Livingstone which is under Prison Services, and the registry and computerisation in the Kabwe Headquarters.

The Donors had a consultant whose tasks included managing the funds, and a donor appointed auditor (from Nairobi). As arrangements a foreign currency account was maintained at Citibank, and a ZANACO Zkw account in Kabwe for operations. A committee chaired by the Deputy-PS was installed to control the use of the funds.

3.3.3 Accounting and cash books

- The project kept and maintained proper accounting records. It uses Pastel Partner accounting software, and project cash book and general ledger are maintained.
- The stores records i.e. the material received register, allocated stores ledger and the stores requisition books were properly maintained.
- The project management maintained a United States of America Dollar account to which all the donor funds were transferred to.
- The project also maintained a Kwacha account. Transfers were made from the US dollar account to this Kwacha account and all the project transactions were done from this account.
- Bank reconciliations were correctly and timely performed.
- All payments and transactions are pre-audited by the internal audit section before cheques are cut and distributed.

3.3.4 Assets management and procurement

The project maintains a fixed asset register, which shows details of assets procured/donated to the project. The asset register was well updated and the following information was clear.

- Date when assets were purchased
- Cost/Value of the assets
- Serial / Identification number of assets
- Location and user of assets
- Details of the suppliers

However, for Government assets, the register maintained is not as complete and deserves further improvements. A procurement committee is in place. Procurement needs are to be identified by the requesting office, and then to be verified with stores. Upon an estimate of costs, the launch of tenders is done according to the specifications. The Procurement Committee then approves the schedule of works. The evaluation of the bids is done in terms of specifications and price. The threshold for the Commissioner to approve without involvement of the Zambia Public Procurement Authority is 30 mio ZKw.

3.3.5 Financial reporting

For project purposes, the Prison Services are used to provide financial reports as required by the respective donor. Under the Prison Rehabilitation programme, Zambia Prisons Service management were required to ensure that proper accounting records were kept, which disclose with reasonable accuracy at any time the financial position of the project. They were also responsible for safeguarding the assets required under the project.

Reports on Government funding are also submitted according to the required format. However, these reports are sometimes delayed, and sometimes even by several months.

3.3.6 Internal control and external audit and review

The project management instituted controls to ensure proper operations of the financial systems

- Authorization and review of expenditure, by different staff of the project
- Separation of duties of the accounting and procurement officers is clear
- Review of quotations from several suppliers by the procurement department before selection of competitive supplier

These internal control mechanisms seem to function fairly well, although not all of the established rules are adhered to in all cases.

3.3.7 Institutional and Human Resources capacity

The project management is designed in such a way that there is a desk officer who is responsible for the day to day transactions of the project. This desk officer is also responsible for the production of the final account and other related reports which he submits to the Commissioner of Prisons and the Donors.

3.3.8 Assessment of the IT status

Also in the Prison Services, standard computer hardware and software is used in standalone systems for financial management operations. Financial reports are sent to Accountant General's Office through the Government FMS and are usually in time, or only slightly delayed.

3.3.9 Overall assessment

The Zambia Prisons Service through Zambia Prisons Service rehabilitation project as indicated above has had experience in the management of donor funds. The audits carried out by the external auditors (private and public) for the project have expressed favorable opinions on the financial management of the resources.

In view of the above, the Zambia Prison Service is capable of soundly managing the financial resources that any source could provide for general or specific projects. The overall risk is therefore also assessed as "moderate".

Nevertheless, needs for supports are still prevailing, beyond the mere provision of funds. With respect to financial management, these include supporting the timely provision of financial reports in line with the prescribed formats, and a consequent implementation of internal control procedures, for both, Government and donor funds.

3.4 Judiciary

3.4.1 Strategic plans, work plans, operational plans

The Judiciary made efforts in 2001 to come up with its first Strategic Plan for the period 2001-2003. But due to financial and administrative constraints, the Plan never materialized. The operationalisation of the Judicature Administration Act particularly with respect to the staff members' reporting to the Judicial Service Commission rekindled and heightened the need for a Strategic Plan. Using the Access to Justice financial and technical assistance, a Strategic Plan and Development Programme (SPDP) was finally formulated in 2008. This plan covers the period 2009-2013 and was recently officially launched by the Chief Justice. It is a comprehensive document that will be useful in charting the future course of the Zambian Judiciary.

3.4.2 The budgeting process

The Judiciary receives the bulk of its annual budget through the normal Government budgeting process, and gets its allocations according to the approved budget from the MoFNP. In keeping with all institutions of the State, the budgetary process at the Judiciary is guided by laid down procedures.

Section 6 (1) of the Judicature Administration Act provides that funding for the Judiciary shall be appropriated by Parliament while (2) states *“The Chief Administrator may accept money by way of grants, whether or not subject to conditions, for the benefit of any activity, function, fund or asset of the Judicature or any part thereof.”* This legal provision hence allows the Judiciary to obtain donor funding whether directly or through the treasury. It is still a matter of ongoing dialogue and debate as to whether funding to the institution should still be under the purview of the Ministry of Finance and whether this does not in fact compromise its independence.

The Judiciary has for some considerable period, been one of the major beneficiaries of donor funded projects among justice institutions. In a Financial Management Capacity Assessment for the Access to Justice commissioned by Danida in 2006, the forerunner to the current consultancy, the level of accountability for these donor funds could not be assessed as records were not availed due mainly to weaknesses in record keeping and general inefficiency in the financial management function. The institution subsequently received a high risk assessment level.

3.4.3 Accounting and cash books

The implementation of the Judicature Administration Act, which conferred the Judicial Service Commission with powers of staff appointments, hitherto under Cabinet Office, in 2007, saw very significant staff reforms leading to a radical shift in the way the accounting and procurement units operated. A significant number of accounts personnel were surrendered to Cabinet Office and new staff recruited from both within and outside the Civil Service. This has resulted in significant improvements in the way these units now operate.

A review of the operations of the financial management function by way of a questionnaire was made and independent verification by perusal of selected records and documents indicated that the system was operating reasonably well.

Accounting for Government funds

Funds from Government are received via control accounts held at the Bank of Zambia. These are transferred to mirror accounts held at commercial banks from which payments are made to suppliers of goods and services. A review of these accounts showed an improvement over the 2006 status both in timeliness and presentation. Cashbooks are done monthly, checked, approved and filed, unlike before when there were no hard copies availed. The main weakness noted was in the backlog of bank reconciliations arising from the commercial bank’s failure to avail bank statements on time. By May 2009, bank statements dating back to January had not been availed for the main mirror account. Management explained that the bank had been constantly requested to avail these statements without much success. It was understood that these bank statements would be availed within the month of June.

Accounting for donor funds

Cooperating partner funding to the Judiciary is mainly by way of project support with disbursements made direct to project bank accounts. Government counterpart funding where the bilateral agreements provide, is channeled through control 20 at Bank of Zambia and subsequently transferred to the mirror account for Recurrent Departmental Charges (RDC’s). Funds earmarked for donor supported projects and programmes are then transferred to the project bank account. There are currently three active projects namely, the Juvenile Justice Programme funded by GRZ and SIDA, The Child Justice Forum funded by Save the Children

Sweden, and the Modernization of the Judiciary funded by the Investment Climate Facility for Africa (ICF), a Tanzanian based Trust.

The Juvenile Justice Programme is GRZ supported and has a budget line in the Yellow Book, Government's annual budget. Government funding via control 20 is transferred to the main RDC mirror account at Zambia National Commercial Bank (Zanaco) from where payment is made into a Programme bank account to which the donor makes direct disbursement. Reporting modalities could not be easily confirmed. However a clean audit report by the office of the Auditor General for the year 2007 was availed.

The Child Justice Forum is directly funded by Save the Children Sweden after work plans and budgets are approved. Reporting for the funds is quarterly. An accountant recruited from the private sector in the recent past oversees the project account. Monthly cashbooks and bank reconciliations are done. A clean audit report for the year ending 31 December 2008 conducted by a private firm of Chartered Accountants was availed to the consultancy.

As part of the modernization of the Judiciary, a project to improve work flows via computerization was recently launched. The project is financed by ICF with a counterpart funding from the Judiciary itself. Funding is via direct disbursement to a project account, with commingling of funds for other operations expressly forbidden. So far, one disbursement has been made. A copy of the project agreement was availed and indications so far are that it will progress well.

3.4.4 Procurement procedures

Following implementation of the Judicature Administration Act which confers authority for staff recruitment upon the Judicial Service Commission, the procurement department has been strengthened. A new structure for the Procurement and Supplies Unit (PSU) has been approved and new staff recruited mainly from the private sector. Late last year, the Judiciary applied to the Zambia National Tender Board (ZNTB), now the Zambia Public Procurement Authority (ZPPA), for an upgrading of its procurement threshold level. An inspection was made that resulted in an upgrade to category "A" from an uncertified level, thus allowing the institutional tender committee to award tenders of up to K10,000,000,000 (Ten Billion Kwacha) from the current K500,000,000 (Five Hundred Million Kwacha). The letter of certification from the ZPPA Director General was availed to the consultancy.

3.4.5 Financial reporting

As in all government institutions, the financial reporting comprises of a simple computer generated income statement under Government's FMS accounting package. It is a monthly report that compares actual outputs against budget. A consolidation of the monthly report format at year end comprises the annual institutional financial report.

3.4.6 Internal control and external audit and review

The Judiciary is regularly audited by the Auditor General. Apart from a number of minor inconsistencies, the latest publicly available Auditor General Report also mentioned some cases of misappropriation of funds in the Judiciary.⁸ However, a thorough review was made of this issue by the Judiciary and the individuals implicated have since been dismissed. The process of recovery from their terminal benefits has been instituted which shows that such issues are taken seriously.

⁸ OAG Report, 2007, p. 13.

3.4.7 Institutional and human resources capacity

With the operationalisation of the Judicature Administration Act and in particular the reporting of all staff members to the Judicial Service Commission, the Judiciary has taken a big step towards ensuring it hires staff with the necessary skills and qualifications to be able to handle assigned responsibilities optimally. While not all staff has been recruited in the recently approved optimal organisation structure, there is a clear purpose to ensure that the skills needed to meet the objectives of the organisation are acquired.

3.4.8 Assessment of the IT status

Financial management staff uses personal computers to generate cashbook and other reports. There are sufficient machines for this purpose and the staff is adequately skilled in fulfilling their tasks by using this equipment. What has been noted however is that maintenance of the machines is not routine thereby leaving them vulnerable to the risks of crashes and virus attacks which are common in large government institutions. Support in this area should therefore be considered not only at hardware level but also software maintenance.

3.4.9 Overall assessment

As stated earlier, the transfer of powers to recruit staff from Cabinet Office to the Judicial Service Commission has seen tremendous improvements both in the quality of staff and operations of the financial management and procurement functions of the Judiciary. Whereas the rating level assigned to the Judiciary by the 2006 study was **High** due to the many weaknesses observed, this consultancy considers that the risk levels have come down to **Moderate**. It must be mentioned that these changes are relatively new and how they impact on the institution in the long run may not be very easy to ascertain.

There has been a general observation that Access to Justice activities are not being implemented according to work plans due in large part to the centralization of financial management and procurement functions at the GS. In particular, all AtoJ procurements of significance are handled by the Ministry of Justice Tender Committee, which has been widely perceived to be delaying the processes. A number of reasons for this have been suggested, some of which are in the realm of speculation. What is clear, however, is that the current system is highly unsatisfactory and is impacting negatively on implementation of programme activities. For example, the last Steering Committee meeting approved work plans for the seven months of March to September 2009, but no releases in relation to activities approved by the SC and requiring subsequent approval by the MoJ Tender Committee have been made due to delayed decision making by the MoJ Tender Committee.

The judiciary administration is of the view that funding to the institution should be made directly rather than through the GS or the Finance Ministry. There is a perception that if funds were to be channeled through the Finance Ministry, some budgetary allocations to other activities could suffer reductions. However, the Treasury demands are that all financial resources going to Government institutions must be captured as part of the nation's resource envelope. This does not necessarily require that these resources must be channeled through the Ministry of Finance. To do so, however, all AtoJ activities must have budget lines in the Government Yellow Book so that funds passing through the Treasury can be properly allocated. It is difficult to know whether the widely held misapprehensions about funding through the Finance Ministry have a serious basis. In any case, donor funded projects and programmes are only supposed to be an interim solution until Government can fully take over the respective functions. A first step of integration into the local funding system is certainly the full information of the local institutions, Ministry of Finance and National Planning, and Parliament as the ultimate oversight body over budgetary affairs, through the Yellow Book that is presented to Parliament for approval.

However, the options between direct funding and funding through the MoFNP or for that matter preserving the status quo would need further dialogue and consultations among the stakeholders. As the Judiciary has been receiving funds directly in the past and currently exhibits a relatively high level of financial probity, the most preferable option would be direct funding to a commercial bank account. There must however be discussions with particularly the Finance Ministry on the mechanisms of capturing this funding in the Treasury accounts. The least preferable would be the current system of funding through the GS and being subject to the MoJ Tender Committee with its current many challenges.

3.5 Director of Public Prosecutions

3.5.1 Financial management environment

Financial management functions are exercised by the MoJ which has seconded an Assistant Accountant. In practical terms all financial transactions are conducted through the Ministry's books of account. When data is collected, it is processed through cashbooks and the Financial Management System (FMS), a computer system used by all Government institutions. There are no separate cashbooks for the institution and any assessment can only be done for the whole Ministry.

3.5.2 Challenges to information gathering

The consultancy was unable to verify information obtained by way of answers to a questionnaire due to staff not being availed to assist the consultancy. The Principal Accountant was requested on several occasions to assist in availing staff to the consultancy team with no success at all. The reason advanced was that the officer in charge of DPP related transactions was on study leave. The 2006 study expressed concern in the manner records were being kept at the Ministry and cited several examples of internal control weaknesses. Notable cases of weaknesses were:

- Un updated cashbooks lagging behind by as much as four months
- Late bank reconciliation statements lagging behind by as much as eight months
- Substantial unreconciled amounts on the bank reconciliation statement
- Weak internal audit department

3.5.3 Overall assessment

There does not seem to be any evidence to suggest an improvement in the operations of the DPP Accounting Unit. At the moment, and at least until a separate Accounting Unit would have been established, any targeted funding may only be safely done through the Governance Secretariat.

While the needs for support are substantial, the absorption capacity at present for TA inputs is also limited. Support measures are to be defined through ongoing backstopping and advisory services delivered from the respective services within the Governance Secretariat. However, when the frame conditions of the DPP are changed, and the institution is given its independence from the MoJ, support needs will have to be redefined in line with the new tasks and responsibilities which also have to be recognized through adequate administrative structures by Government.

3.6 Legal Aid Board

3.6.1 Financial management environment

In general, the Board has a functioning financial administration establishment. It has a Management Accountant who is assisted by two assistants and a cashier. However, accounting policies, procedures and manual have not been developed yet and though an Internal Auditor is in place, he is not guided by any laid down regulations. The Internal Auditor claims to do spot checks, but these are random and not coherently administered. Interviews were held with the Internal Auditor but follow up on how accounting systems were performing could not be done.

3.6.2 Fraud investigations

On the day that the consultancy planned to conduct work at the LAB, a story broke out in the press of fraud investigations relating to the procurement of motor vehicles. Several senior personnel including the Management Accountant and the Procurement Officer were under investigation by the Drug Enforcement Commission. The consultancy confirmed this and found that key personnel had been sent on leave and accounting documentation carted off by investigating agencies. As a result, the consultancy could not proceed with work at the institution.

3.6.3 Overall assessment

Due to the above mentioned fraud investigations that saw key personnel suspended, no detailed work or interviews could be done. As the Board had not set up any accounting policies and procedures, it can only be speculated that the institution was still using Government procedures. It must be pointed out, however, that since the institution is now grant aided, and Government does not fund it according to activities but only through lump sum grants from the parent Ministry.

As a more detailed assessment could not be made during the consultancy, it is recommended that any funding to the institution should be through the GS as is the case at present. However, if the current investigations are yielding any positive results and a new and functioning financial management structure has been reestablished, the Legal Aid Board could also be treated as a more independent institution that could be considered for direct funding out of a joint aid disbursement modality.

The Legal Aid Board and its tasks are also in particular suitable for enhancing the involvement of non-state actors in the AtoJ programme, e.g. through the involvement of paralegals etc. There are for example ongoing efforts by the AtoJ to strengthen linkages with the Paralegal Alliance Network (PAN). It is especially this aspect to which the current GTZ Good Governance Programme is able to provide essential additional links and inputs that will enhance and broaden the scope of the overall programme.

4 Financial support models and compliance with donor standard operations

In general, three different options of a joint aid disbursement modality can be distinguished:

1. Direct funding of beneficiary institutions
2. Basket funding through Governance Secretariat
3. Sector Budget Support through Government Treasury Account 99

These three different options are outlined with respect to their characteristics, below, and plotted against the findings on the financial management performance of the beneficiary

institutions, as well as against Government capacity and compliance with respect to donor requirements.

4.1 Direct funding of beneficiary institutions

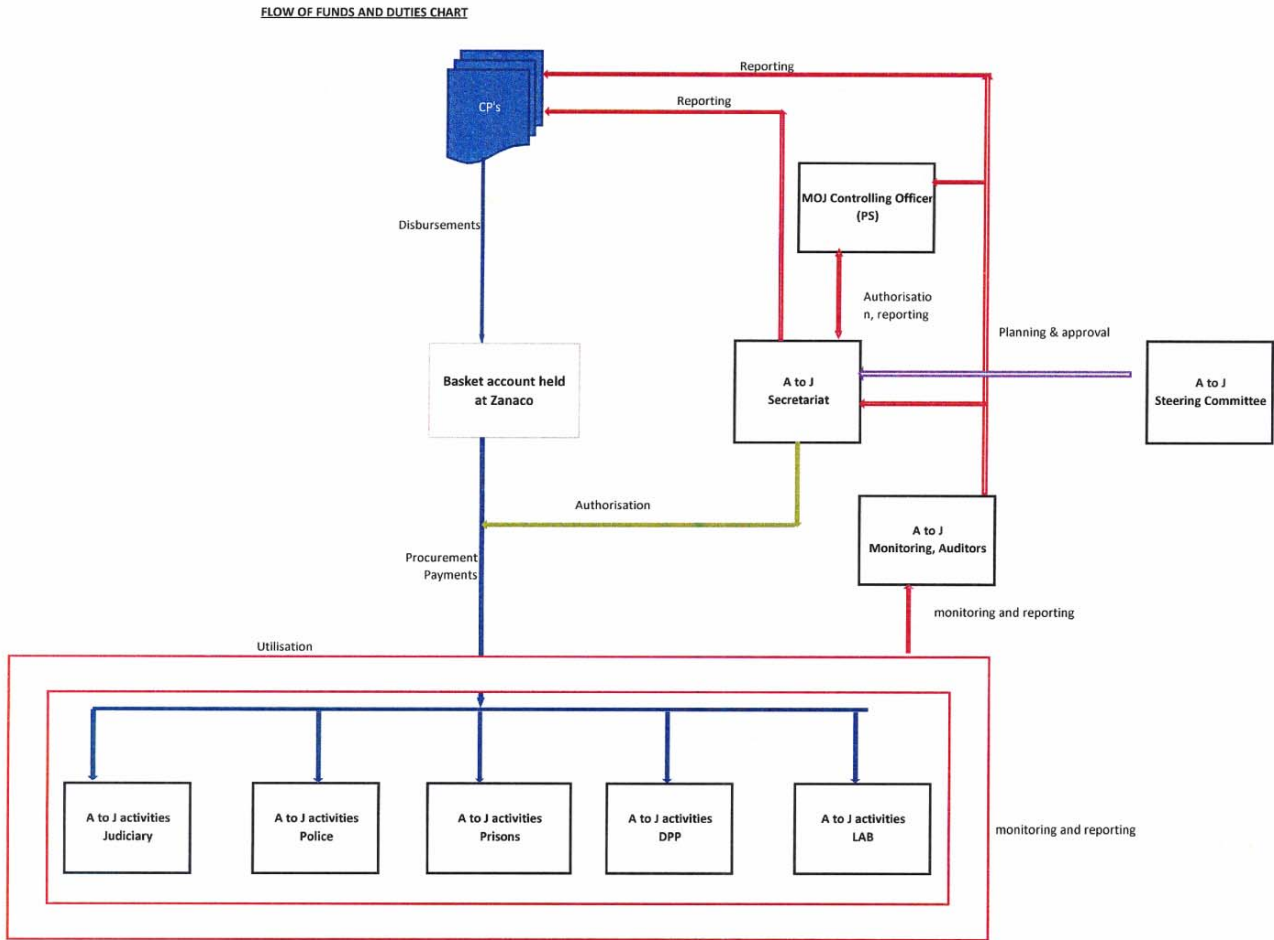
The direct funding of the AtoJ institutions would imply that the donors either combined or individually, channel their support directly to the beneficiary institutions. The Judiciary, but also Prison Services are explicitly entitled to receive this kind of direct funding, and have made use of this option in the past. The Judiciary explicitly expressed their preference for this kind of direct support.

The AtoJ donors, and in particular GTZ, have experience with this mode of support delivery. It would require a Financing Agreement between the donor and the beneficiary. EC regulations itself would require following EDF procedures if implemented directly, and not under a Delegation Agreement as is the case here. However, with respect to the intended Delegation Agreement with GTZ, EC would follow the GTZ procedures which have been found to comply with EC requirements in general.

4.2 Basket funding through Governance Secretariat

The Danish funded study “Assessment of selected designs and proposal for the establishment of a basket funding mechanism” came to the conclusion that a basket fund attached to the Governance Secretariat is the best option for a multi-donor funding modality. The present EC Action Fiche foresees that GTZ will enter into financing agreements with the GS while earmarking funding for the five AtoJ institutions responsible for implementing defined activities under the overall programme. The GS would function as a coordinating body for the overall coordination of the programme (communication, cooperation and coordination). GTZ is in principle accepting this structure, but is still undecided regarding the fiduciary risks involved as well as the present implementing capacity of the five recipient institutions. Nevertheless, all partners agree that there should be a joint funding mechanism that comprises all donor funds in one basket.

The following diagramme shows how the study envisages the functioning of the basket:



SOURCE: DANIDA Study: Assessment of selected designs and proposal for the establishment of a basket funding Mechanism.

The Governance Secretariat is playing a central role in this model. With this funding modality, authorization and procurement processes both rely on the smooth functioning of the Secretariat. With this, the basket does not solve the apparent weaknesses of the current modality, which is characterized by procurement and disbursement delays and unsatisfactory levels of communication between the institutions. It also does not allow for a more decentralized approach that places more responsibility into the different Government institutions and allows them to take on a higher level of ownership. They keep on depending on a sometimes unpredictable trickle from the GS.

4.3 Earmarked Sector Budget Support under supervision of Governance Secretariat

The Zambia Aid Policy clearly states that General Budget Support and Sector Budget Support are the two preferred modalities of aid delivery. More and more donors have accepted this preference and have joined the Poverty Reduction Budget Support Memorandum (PRBS MoU) of Understanding. While Denmark is not one of them, the EC has been the frontrunner in both, general budget support, as well as sector budget support in Zambia. Germany has also joined the PRBS MoU and has contributed to the GRZ budget since 2007. The EC provides sector budget support in line with the OECD DAC definitions in the roads and health sectors. This kind of sector budget support is basically not earmarked and can be used by the recipient government according to its own preferences. The donor would then only have the privilege to participate in a lead function in the respective sector. However, Zambia has agreed to directly transfer the money received under the Sector Budget Support facilities to the respective sectors, i.e. to the National Roads Fund Agency and the Ministry of Health. Although not required under the respective Financing Agreements, the recipient agencies still treat these funds separately and allocate them to clearly defined projects under their respective portfolios. For example, the roads funds are taken to maintain and rehabilitate certain roads, while other roads are maintained under the Government budget. The Ministry of Health, under the 9th EDF facility, has used the EC funds for a human resources retention scheme that was offering financial incentives to medical staff in certain hardship posts in remote areas. These kinds of incentives would not have been possible without Cabinet Office clearance to be funded out of GRZ funds.

While this funding modality, GRZ's preferred option, is working quite satisfactorily in these two sectors, it has a number of weaknesses if it would be applied for the AtoJ Programme. The Permanent Secretary Budget and Economic Affairs himself cautioned the consultants in this respect, since his Budget Office may not have the capacity to follow detailed donor instructions as to what kind of funds are to be forwarded to which institution, once, the donor funds would have reached the Government Control Account 99. This is different with respect to the roads and health sectors, since these are substantial funds dedicated to single big institutions. But even in this case, some funds in the past were not forwarded as agreed upon, due to misunderstandings between the respective donor, Bank of Zambia, and Budget Office. To channel relatively small amounts of earmarked funds to six different institutions on a monthly or quarterly basis would be almost impossible to handle.

Even if the money would be channeled in this way, the next bottleneck would be the utilization of the funds. Government funds are transferred to one control account for each of the Heads held at ZANACO. From there, the controlling officer would initiate the forwarding of the funds to different commercial bank accounts, to be used for the respective Ministries priorities. However, the actual use of the funds transferred from treasury is subject to the instructions of the controlling officer, although the funds might have been transferred for certain purposes in line with the approved budget. However, so far, Government control mechanisms are not yet sufficiently tight to ensure that the transferred funds are actually used for the approved activities. This can only be verified by the Auditor General who is auditing the budget utilization not less than one year after the money has been spent. And so far, the Auditor General is mainly concentrating on clarifying outright abuses of public funds, but does not have the capacity to scrutinize the spending in line with the approved budget activity.

The possibilities of the AtoJ donors to insist that the monies disbursed to the mother institution are actually used for the respective AtoJ activities are even less evident. Therefore, the consultants believe that this option is not (yet) suitable for the AtoJ Programme.

5 Conclusions

5.1 Conclusions with respect to the financial management capacity of the AtoJ institutions

Below are the summary findings in general form on certain aspects of scrutiny for the financial management performance of the AtoJ institutions. More detailed findings with respect to these categories are presented in Annex 4, structured according to the EC questionnaire.

Policy and procedures manuals

A finance manual is designed for ease of reading and comprehension and covers

- scope of applicability
- uniform application
- objectives
- responsibility, authority
- accountability
- procedures for implementation
- documentation
- checks and controls
- monitoring and evaluation

In the AtoJ Institutions, such manuals were generally not made available. If they were indeed available, they were not availed or the respective officers were not aware of their existence.

Budgetary and budgetary control systems

Planning

In general, all Government institutions are required to follow a three year Medium Term Expenditure Framework (MTEF) rolling plan. The Annual budget plan sets short term targets and allocates funds for target achievement.

The annual budget for Government funds is done on the basis of annual work plan as per Government's Policy and Medium Expenditure framework, but the relationship to a three year MTEF is not very clear. The major bottleneck however, is that donor funded AtoJ activities are not included in the budget plans and are planned for separately.

Funds flow

Funds should flow in a predictable manner, according to quarterly funding profiles. In the AtoJ institutions, funds are released from MoFNP on monthly basis based on the quarterly projections/profiles. However, projections are often not made according to actual planned activities (only given as annual budget divided by 12 months) and sometimes the funds are not released according to the projections. Reasons might be that the Treasury records a shortfall in revenue, but also because of lack of spending capacity in the beneficiary institutions, with substantial unspent amounts being kept in commercial bank accounts.

Accounting policies

Accounting should follow a suitable policy determined by Government procedures in line with international standards, supervised by the controlling officers, and should be applied consistently and timely. Government accounting system is currently only on a cash basis. Institutions do not maintain debtors or creditors ledgers.

Cash and bank

It is good practice to maintain separate accounts for each programme and make bank reconciliations on a monthly basis. While Police and Prisons maintain different accounts for

each project, the Governance Secretariat currently only maintains one account for different programmes.

Monitoring and reconciliations

Monitoring and reconciliations should be regularly done on a monthly basis for the rapid delivery of information, analysis and interpretation, and immediate reverse transfer if needed as per comment and instruction. However, monitoring is not effective and efficient due to delays in obtaining information, especially in the Governance Secretariat. This is partly due to the complexity of the administrative system of the programme for which there are no standard Government procedures in place.

Accounts staff levels

Adequate staff with appropriate qualifications and skills is required to fulfill the accounting functions in each institution. At the moment, the Governance Secretariat has one accounting officer who is responsible for all the processing of the transactions from the donor account. The DPP has only an officer in the MoJ who is one in charge, while the Judiciary and Legal Aid Board have spare units. The other institutions, Police and Prisons, have desk Officers for the programmes, under their respective accounting sections which are generally well staffed.

Procurement and controls

It has become obvious that procurement delays are one of the major draw-backs of the current running of the programme. But also, procurement processes in some of the AtoJ institutions are still behind expectations and requirements. One would normally expect that the Ministry of Justice would be a standard bearer to maintain procurement procedures of highest standards. This is not the case at the moment for which reason AtoJ has experienced serious delays with the application of what would seem irregular and ad hoc procedures.

Internal audit

The role of the internal audit is to check compliance with laws, directives, policies, procedures, and to report shortcomings and deviations. Internal auditors also assess consequences of shortcomings and deviations detected, propose corrective action, and check compliance with instructions for corrective action.

Staffing of Internal Audit (IA) should be with officers with a sufficient qualification and experience and trained extensively in auditing practice. They should report to the appropriate Authority or Audit Committee. Their working arrangements should be based on an annual work plan based on risk assessment, which is to be approved by an Audit Committee that is also following up on the inspection outcome.

In the AtoJ institutions, transactions audits are done by internal auditors which exist in all institutions except Governance Secretariat and the DPP. However, the guidelines for internal audit procedures are not comprehensive. The staff put on these tasks is not all qualified for the job and are not sufficiently trained on standard procedures to be followed. While the payments at Governance Secretariat and in most other institutions are generally not pre-audited, the Auditor General audits the transaction annually. At Police and Prison, the internal auditors report to the Permanent Secretary, MOHA, and not to the respective commissioners. However, in general, no audit committee was found in place, and no detailed manual and policy document on internal audits was found. There was also no risk analysis done, and audit of units were mostly done on the basis of volume of transactions. No internal audit reporting format was found and the reports remained sketchy.

External audit

All Government accounts should be audited annually by the Auditor General as external auditors and the OAG report should be submitted to the President who forwards it to Parliament for scrutiny. The Controlling Officers then have to report on these findings. A comprehensive answer on queries raised by the External Audit is to be given within a period of not more than

six months, including a report on actions taken to rectify the shortcomings and reprimand erring officers.

In Zambia, Government accounts are actually regularly audited by the Auditor General and private audit firms appointed by the OAG. Management responses are prepared on the queries raised by the Auditor General, but they are usually delayed and do not completely answer and act on all queries raised.

Reports

Reporting systems have to be clear and comprehensible, relevant, complete and accurate, comparable, and timely. Quarterly and Annual financial statement ("Statement C") are submitted to the Accountant General in MoFNP who is then consolidating the GRZ accounts. The results are then published on the MoFNP website.

Information technology infrastructure

IT solutions should be suitable and robust to facilitate the processing of the transactions in a timely, effective and efficient manner. However, at present, the AtoJ institutions in general either operate manual or stand alone IT systems with standard software that is not adjusted to the needs of a sound financial management system.

5.2 General observations and conclusions

Although not being included as an explicit part of the ToR, the consultants feel that it is important to highlight a few basic findings on the design of the programme that have a significant influence on its success – or failure –, beyond the mere financial management capacity of the AtoJ Institutions:

- Despite the FNDP sector definition, one has to note that the AtoJ as a programme is to a large extent defined by donor perception of a functioning judicial system and "sector". Apart from the current donor funding, there is no Zambian institutional link between the beneficiary institutions. While this was helpful to develop the cross-institutional approach during the initial phase of the programme up to now, this structural feature has become a serious constraint for ensuring the institutional sustainability after the phasing out of the donor support. As the programme is defined by now, the beneficiary institutions can hardly develop the sense of ownership required to fully absorb the programme and its components into the mainstream of Zambian Government operations.
- This factor is reinforced by the definition of the outputs under the current programme, which are – on purpose – phrased as cross-sectoral elements of the programme. While this was done in order to strengthen the cross-sectoral integration, it has rather reconfirmed the perception of the participating Government institutions that this is indeed a donor-driven programme. This is because the way Government works is not cross-sectoral, but according to institution-specific objectives, outputs, and targets. Cross-sectoral issues are usually covered through purpose-specific coordination meetings only, with a clear hierarchy of who is in charge for what. This kind of operational procedure cannot be changed through a donor-funded programme, since it is standard practice across all sectors of Government in Zambia, as elsewhere in the World. It remains therefore the professional opinion of the consultants that maintaining cross-sectoral outputs perpetuates the perception of the programme as being championed by donors, rather than by Government.
- Also, the outputs are not phrased as "services provided", but rather refer to support functions for a better service provision. In this way, they are actually at a level below the typical level of LogFrame outputs for a results-based programme.
- The fact that the Governance Secretariat as a coordinating body has been established as a Government institution is without any doubt a strong point where the Zambian set-up is definitely ahead of many other countries where similar programmes are being

undertaken. However, its administrative placement at a level below the rank of a Department within the Ministry of Justice does not give it a particularly efficient status for coordinating relatively strong and independent institutions, such as the Judiciary, the Police, or Prison Services. Even the two other institutions that administratively fall under the Ministry of Justice, the Legal Aid Board and the Directorate of Public Prosecution, feel strongly that they should in fact be more independent from the Ministry. This perception does not facilitate these institutions to be coordinated by a Sector Secretariat.

- While the AtoJ Programme and chairpersonship of its Steering Committee falls under the PS Justice (Legal), procurements are subject to approval by the Ministerial Procurement Committee of the MoJ, chaired by the PS Justice (Administration). This structure is not helpful for the acceptance of the programme and its management structure by the other institutions that are not under the Ministry of Justice.
- With respect to the financial management of activities under the programme this had several consequences:
 - i. The Zambian Government institutions are preparing their Government funded budget and activities strictly separate from the donor-funded activities that were basically managed and funded through the Governance Secretariat. Therefore, the donor funded AtoJ activities are not mentioned in the Yellow Book.
 - ii. They are also not routinely audited by the Auditor General. If the donor requests the Auditor General to conduct an audit, it is done separately from the Government funds for the respective institution, against reimbursement of auditing cost.
 - iii. However, with such parallel accounts for donor and Government-funded activities, there is a big danger of double funding of the same activities. This is very difficult to detect through normal auditing procedures which are usually just checking the expenses against one particular funding source at a time.
 - iv. If donors – and donor-funded consultants as the current mission - are requesting to check on finance management performance, the institutions are very willing to open their books on the donor-funded activities, but are much more hesitant to disclose their handling of Government accounts and funding, since they are not accountable for this money towards the donors, and vice versa.
 - v. Since the interest of the Ministerial Procurement Committee of MoJ in the procurements for the institutions under the AtoJ Programme is not very strong, severe delays in the decision making process on procurements occur.

6 Recommendations

In order to strengthen Government ownership and to reduce the fiduciary risk, the organisational structure of the programme should be simplified and aligned with Government structures as much as possible, independently from the flow of funds. This streamlining will be a major step in reducing the fiduciary risks, and will help to integrate the programme within its lifespan into mainstream Government activities as already vaguely outlined in the programme document as an exit strategy.

6.1 Combined donor funding to the AtoJ institutions

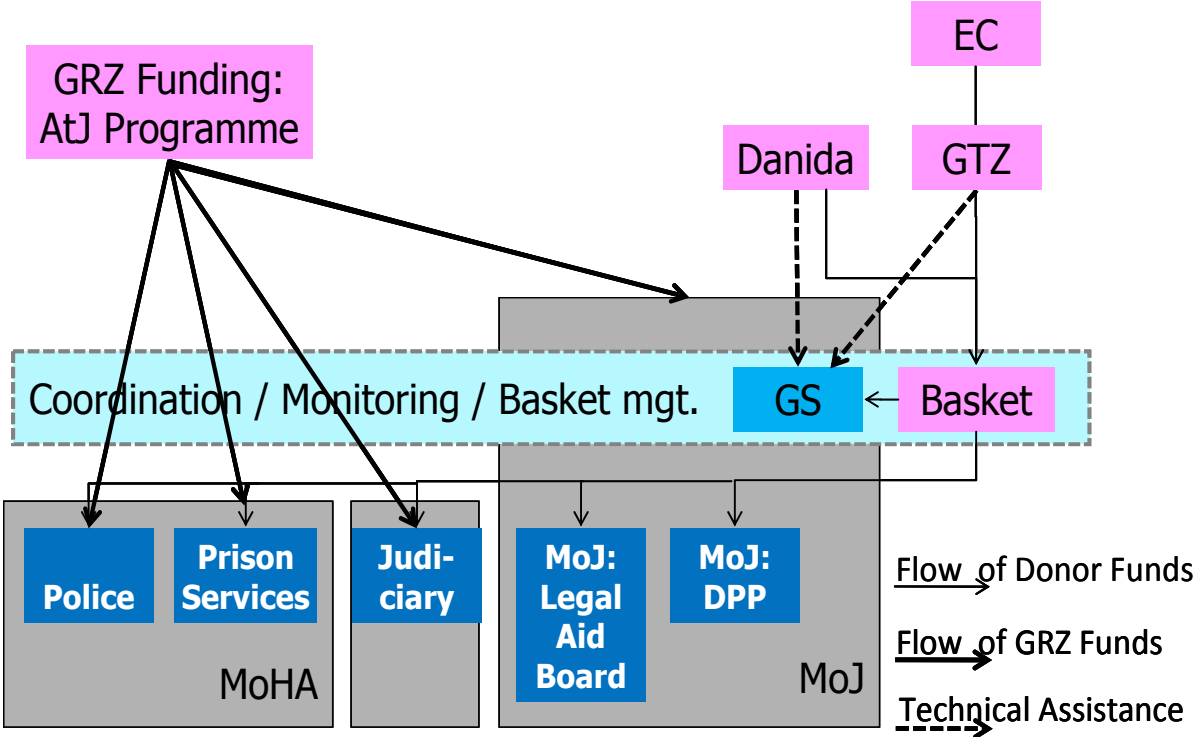
With respect to the most suitable funding option, it has been outlined above that all three major options have some serious shortcomings that are constraints for the success of the programme.

A basket fund attached to the Governance Secretariat would be an expansion of the current modality, the “zero option”. While the Danish study, which recommended this option, acknowledged that the ultimate way forward would be to integrate the donor-funded programme into Government structures, it did not identify or check the suitability of these structures, as compared to a basket funding mechanism. The ToRs of the present consultancy do not cover

this aspect either. But the results of the fiduciary risk assessment and the verification with MoFNP show that there are a number of shortcomings within the Government procedures that would make it difficult for the AtoJ cooperating partners to channel their funds through Government accounts.

Therefore, a compromise between the three options outlined above is suggested as the way forward. The basic principle of this suggestion is to stay as close as possible to Government budget planning and funding principles, however, while still maintaining a separate accounts structure. The dedicated AtoJ accounts of each institution would be fed with quarterly releases of funds from a joint donor account (“basket”) in line with the quarterly funding profiles of the institution. The management of the individual accounts and funds, however, would be decentralized, and done by the various institutions. An exception from this principle may be, at least for the interim, the DPP and the LAB, which are under the MoJ and where the administrative prerequisites for managing own funds are not yet in place.

The following diagramme shows the functioning of such a hybrid basket:



6.2 Reorganisation measures

This recommended funding model is to be achieved by means of the following organisational measures:

Structure

It is acknowledged that the strengthening of the role of the Planning Units (PUs) in the various AtoJ institutions in combination with a more decentralized administration of the programme is already a step in the direction of a more efficient programme structure. However, even after lengthy discussions around this argument the consultants still do not believe that this is enough to smoothly and gradually embed the programme and its contents into the Government mainstream. Nevertheless, it is obviously up to the Steering Committee and the Cooperating

Partners to take up the consultants' recommendations with respect to structural changes. Nevertheless, despite the skepticism of a number of stakeholders, they are presented in this report as the consultants' opinion, as they are felt important to provide a comprehensive and complete assessment.

- The consultants see the realignment of the outputs with the beneficiary institutions as the best way forward, if one wants to truly integrate the programme into Government operations. This means that each institution should take up fully the implementation responsibility for one particular output or component. Eventually, the current outputs that have activities falling under the hierarchical responsibility of the respective institution could be structured in a similar way as common sub-outputs and major activities under the respective institution-related output, thereby showing the consistency and general approach of the programme.
- The outputs should be phrased as “public services provided” by the respective institution, in line with their overall mandate relating to Access to Justice, and not as cross-cutting major activities as is the case at present. This makes them much stronger and allow for a much easier monitoring of impacts. For example, outputs relating to improved service provisions may be phrased as: “Vulnerable parts of society are effectively protected against violence” (by Police), or: “Legal advice is provided to vulnerable members of society” (by Legal Aid Board), etc.
- The monitoring of impacts can then relatively easily be done, separately by the respective institutional services of the AtoJ institutions. For this, indicators have to be developed in terms of improvements in actual “services provided” (OUTPUTS), “utilization of the improved services provided by the public” (i.e. increased actual, measurable access to Justice and/or public appreciation of these services = PROJECT PURPOSE), and “benefits attributable to the utilization of the improved services” (GOAL).
- Along overall programme management, one cross-cutting output may remain with the Governance Secretariat, which guarantees the smooth functioning of the communication, cooperation, and coordination aspects under the programme. This function and output will also have to include linkages to the non-state actors sector, and ensure the adequate involvement of civil society in the programme, and in the sector in general. However, one has to be aware that this output has only a service function for the programme, and is not referring to a public service as such. Nevertheless, it helps to ensure that the overall impacts are greater than the sum of impacts of its individual components.
- Although it is recognized that the Governance Secretariat has also other tasks within the broader field of governance, it should continue to handle the coordination of the AtoJ programme and should remain the only cross-sectoral Secretariat within Justice. Any additional coordinating structure would only separate the programme further from mainstream Government activities. The creation of a separate AtoJ Secretariat as a Programme Management Unit should be avoided.

Budgeting

- The programme budget should be based on an annual work plan that is to be aligned with the Government budgeting process, separately for each of the beneficiary institutions. The institutions are required to prepare a comprehensive budget that includes both, Government and donor funding for the activities for the forthcoming budget year. This overall budget is then to be included in the Yellow Book.
- In order that this is possible, donor funding should be synchronized with the GRZ financial year and commitments should be made for the three year MTEF period. In line with Government procedures, the programme has to give indicative ceilings to the institutions, similarly to the Government budgeting procedures, not later than in August of the preceding year. While Government budgeting has to be defended and negotiated during the budgeting process during the second half of the calendar year, a similar

process has to be initiated for the donor-funded aspects of the programme. This process has to be initiated and coordinated by the GS, with final endorsement of the allocations to be given by the Steering Committee. The consolidated budget for both, donor funded as well as GRZ-funded activities is then to be presented in the Yellow Book for Parliamentary scrutiny.

Funding

- It is recommended that the administration of the funds is decentralized to the maximum extent possible. Each of the beneficiary institutions should be responsible for the funds allocated for the AtoJ activities. In order to ensure transparency and accountability, it is recommended that each institution opens a separate bank account for the additional AtoJ donor funds. As mentioned before, this may, for the time being, not apply for the DPP and the LAB, for which funding may still be administered by the GS.
- Funding to the AtoJ institutions should be channeled to the respective account according to the quarterly profile, as requested by the beneficiaries. These requests are to be based on the approved annual budget and should reflect the procurement schedule fixed in the work plan. The replenishment of funds should be restricted to the volume of justified expenses of the previous quarter.
- When funds are disbursed from the general AtoJ account (basket) to the respective institutions, Budget Office should be informed about the transaction as well. This is in order to increase the transparency of the budget allocation and release process.

Procurement

- It is important that procurement procedures are followed transparently and objectively. Basic fairness demands that a certain set of rules and procedures be followed, also according to a clearly defined schedule with deadlines. While the standard ZPPA rules and regulations are following internationally acceptable standards and should be applied consistently, in particular with respect to form of tender offer, eligibility of bidder, technical and administrative compliance, and the evaluation procedure and criteria.
- However, unlike the current system, the authorization and procurement processes should be done through the Government systems as applicable for the respective institutions, including the limits for the respective tender committees. Depending on the amounts involved, this is done currently through a combination of procurement by the institutions and by ZPPA. After the introduction of the new GRZ Procurement Regulations, which is planned over the next two years, all procurement will be handled by the relevant institutions. ZPPA will then ensure through a tight monitoring process and follow-up that the tender procedures and standards as set by ZPPA are followed transparently and objectively.
- In order to mitigate the risks of procurement under the AtoJ programme, for major contracts, the donors may have to give their endorsement or no-objection first, before such a contract can be signed. The thresholds for this endorsement requirement will have to be defined by the donors jointly, possibly in line with the current EDF regulations. While these tender processes will be handled by the ZPPA, the AtoJ institutions may have to get this endorsement from the donors themselves, after the ZPPA has finalised their work with a recommendation for an award of the contract. This is, for example, the current procedure with EDF-funded contracts handled by various Government agencies.
- As an interim measure, the procurement process for the AtoJ programme may be streamlined by introducing a special tender committee that is composed of members from all the different AtoJ institutions.

Auditing

- The annual audit of the accounts should be done for each institution by the Auditor General or by an external auditor appointed by the Auditor General, at the same time for both, Government funds, as well as the donor funds.
- Internal audit functions will have to be strengthened. Programme activities could include, e.g. to elaborate an internal control manual, and training sessions for the controllers of the respective institutions involved.

Control mechanisms

- With this, the control function of the Governance Secretariat is thereby limited to verifying the quarterly reports, where budget execution and adherence to the work programme is checked before a new tranche of donor funding to the donor accounts of the AtoJ Programme is endorsed.
- On the basis of the GS analysis and recommendations, the Steering Committee then decides on the release of the next quarterly tranche.

These procedures would be a hybrid solution between fully fledged sector budget support mechanism and a more traditional sector basket. The most important feature is that Government planning and procurement mechanisms are used, and thereby strengthened, while the apparent weaknesses of the Government system (allocation of funds for other than the agreed upon activities by the controlling officer, lack of accountability) are considerably reduced.

6.3 Improvement of financial management capacity

There are a number of measures suggested below that should contribute to enhance the financial management capacity of the beneficiary institutions.

Policy and procedures manuals

Manuals should be introduced, covering all aspects of financial management systems. They should be kept in a single, loose-leaf arch lever file. They should be prepared and be given to all the institutions as guides in the operations.

Budgetary and budgetary control systems and planning

There should be a unified work plan and budget for all institutions with specific AtoJ activities. These work plans are to be channeled into the Yellow Book through the normal Government budget procedure. In this way, the Budget should also include purely donor funded activities. The donor funds for these activities under the AtoJ programme have to be included in the Yellow Book as revenue.

Funds flow

Improve the quarterly spending profile in line with activities and adjust the mechanism of the release of funds in a predictable manner, both, for Government as well as for donor funds. The monitoring system should be able to give appropriate feedback and help to improve the projections of funding needs.

While some Government institutions receive their funding on a monthly basis, it is recommended that the disbursements from the joint donor basket to the respective AtoJ institutions is only done on a quarterly basis, on the basis of quarterly spending profiles and annual work plans.

Accounting policies

It is imperative to improve the current accounting policies and procedures. While part of the accounting system can only be changed through an improvement of the general Government system, e.g. to move from the cashbook accounting to accrued accounting, other aspects can directly be addressed through a mere following of standard procedures. Particular emphasis should be put on maintaining the debtors and creditors registers.

Cash and bank

Open separate bank accounts for each institution and reconcile on the monthly basis, with cashbooks to be maintained for each account.

Monitoring and reconciliations

Improvement of monitoring routines including regular reconciliations is needed to ensure faster flow of information between the institutions and the Secretariat.

Accounts staff levels

Ensure that the institutions have sufficiently qualified and committed desk officers assigned for accounting tasks for the programme. With the envisaged increase in financial management tasks at the Secretariat, one will also have to increase the accounting staff levels at the GS.

Internal audit

Comprehensive audits should include compliance, deficiencies in compliance with procedures and in applying Audit Committee orders in respect of audit recommendations and corrective action. For this, professionally qualified and trained staffs are required, and standard internal audit procedures are to be introduced. All transactions should be pre-audited before payments are effected or cheques are issued. An audit committee headed by a non-executive director should be formed to oversee internal audit work and reporting according to the provision of the Finance Act. The programme may also foresee to adapt an audit manual to the specific situation of the programme, and ensure it is applied comprehensively. On this basis, a standard reporting format is then to be used.

External audit

While the quality and depth of the external audit system in Zambia has become a strong point of the Zambian public finance management system, there is still room to enhance the current procedures, in particular with respect to the follow ups on the observations by the Auditor General. Management responses should be published also on the OAG website, as well as final findings on the cases reported earlier.

Reports

The major limitation with respect to reporting is the lack of timeliness of the financial reports. It is necessary to enhance the current status in particular in this respect. In addition to the Government reports, one may have to provide a separate financial report with an agreed format to the donors.

Information technology infrastructure

The IFMIS is expected to provide an integrated system that will facilitate the consolidation of the financial reports of all Government institutions. Nevertheless, interim solutions may have to be found and introduced to help closing the existing bottlenecks in reporting and reconciling.

Procurement

Procurement is a key element in transparent public finance management. In Zambia, the respective procedures are introduced, safeguarded by the Zambia Public Procurement Authority. However, compliance with the rules and procedures must be improved. With view to the delays in the procurement processes for the donor funded activities, this consultancy is suggesting a decentralization of the procurement and payment functions to the respective institutions to achieve accelerated programme activities implementation. This should apply particularly with respect to the three major institutions outside the MoJ, namely the Judiciary, the Police and the Prison Services. Apart from speeding up the procurement processes, this will also help to strengthen Government procedures, and facilitate the integration of the programme into Government structures.

6.4 Improvement of institutional and human resources capacity

The most important step for institutional strengthening is seen in the participating institutions taking more implementation and decision making responsibility, including the responsibility for finance management for their respective activities.

The current AtoJ programme has already identified and planned a series of capacity building measures that can just be taken and included in the enhanced Programme activities. The Planning Units in the respective institutions play a pivotal role in this respect. These measures, however, should be redefined as activities under the respective institutional portfolio, and not under the current cross-sectoral outputs. This would be one measure to strengthen the Pus, since they could take over more responsibility for their respective particular output.

However, the institutional capacity of the beneficiary institutions must primarily be reinforced through additional Government staff responsible for public finance management in the respective institutions, in particular for upgrading the accounting and internal audit functions. This can only to a limited extent be done through external or donor support. The support might come in for helping in defining appropriate capacity building measures. However, these measures should focus on concrete on-the-job training and regular backstopping, and only to a minor extent rely on training classes and workshop sessions.

6.5 Technical Assistance

In order to achieve the intended levels of institutional and human resources capacity building, technical assistance plays an important role in the sub-sector. The current Danish TA is considered highly valuable to provide content matter advice to all AtoJ institutions. This TA should continue to make available its services to all the institutions.

Unlike the provisions made in the preliminary planning documents for the EC and GTZ support, it is not advisable, however, to second TA staff in each of the beneficiary institutions. The consultants believe that these external advisors may not be well received in these institutions, in particular in institutions or functions that might be considered as sensitive, such as the Police.

Additional TA needs, however, are clearly seen with respect to public finance management and planning, monitoring, and reporting. For this, two advisory positions may be foreseen at the

level of the GS. Their services should be made available to all AtoJ institutions upon demand. Because of their non-alignment with the Government hierarchy, the TA services provided at this level have a much better access to the different institutions and can provide meaningful backstopping and inputs to the institutions, including beneficial links to civil society organisations that are difficult to maintain for Government institutions.

These long-term TA positions might have to be supplemented through additional accounting and support personnel, in order to be able to concentrate on their advisory functions.

In addition, short-term assignments should be foreseen that can be accessed by all AtoJ institutions upon request, and for all aspects required. During the early stages of the programme, such short-term TA requirements can be envisaged for planning and monitoring tasks, as well as for improved financial reporting. Such immediate short term assignments could be on subjects such as:

- Preparing MoU(s)
- Aligning AtoJ funding and budgeting with GRZ
- Strengthening PU's in order to allow the AtoJ institutions to take more implementation and decision making responsibility
- Developing manuals covering all aspects of financial management systems

7 Follow-Up steps

Task	Responsibility	Deadline
1. It is clear that the implementation of the findings and recommendations made here can only be done gradually. For this one needs to identify immediate priority areas.	Steering Committee and the different AtoJ institutions	September 2009
2. Nevertheless, the next step will now be to formulate a Memorandum of Understanding that defines the cooperation structure and modalities of all the stakeholders that intend to cooperate under the programme. The draft Memorandum of Understanding as documented in the Annex of the NCG Consultancy (p.33ff) can serve as a starting base.	Cooperating Partners, possibly through a ST consultancy	End of August 2009
3. In order that the intended parallel funding of certain activities can be channeled into the Government planning process, the donors must agree on preliminary budget ceilings for the year 2010 for each of the institutions. This will be required for them to start planning their activities for the year, and to apply for the respective budget resources. Such ceilings must be made available as soon as possible, in order to allow the institutions to define a first outline of their annual work plan that will have to be discussed and defended in the budget hearings in MoFNP. This will require a different breakdown of the funding levels from current practices, where the funding has been allocated to different cross-sectoral outputs, but not to the different institutions.	Cooperating Partners	second half of August 2009
4. The iterative budget planning and approval process will	AtoJ Institutions	August -

Task	Responsibility	Deadline
then have to be followed. As announced by Government, this process might, for the first time, be finalised before the end of the year 2009, with the budget calendar as stipulated in the Constitution amended to allow for an earlier budget approval process.		November 2009
5. In particular, the time between now and October should be used for identifying specific support needs of the different institutions, to be substantiated in the annual work plans.	Cooperating Partners	October 2009
6. The donors must ensure that their part of the funding is then available to be disbursed starting in early 2010 , in order to allow the programme to unfold in time on the basis of the approved annual work plan.	Cooperating Partners	January 2010
7. As outlined above, it is also recommended to redefine the outputs in terms of improved service delivery provided by the various institutions. While this is not a prerequisite for the continuation of the programme, the consultants would nevertheless recommend to get this restructuring done before the actual start of the activities and funding in 2010. This could be done through a two day workshop by the Technical Committee, to be endorsed by the Steering Committee before being introduced as a basis for the financing documents and agreements between Government and donors. It is recommended to also involve civil society in this step, to define positive linkages and synergies.	Cooperating Partners with AtoJ Institutions	January 2010

8. ANNEXES

Annex 1: Terms of Reference (version 16.04.2009)

Governance Secretariat Access to Justice Programme: Capacity Assessment (CA) of the Access to Justice Institutions

1. Purpose of assessment

The Capacity Assessment (CA) of the Governance Secretariat and the five Zambian Access to Justice institutions is part of the process to prepare for the forthcoming contribution of the **European Commission** to the **Zambian Access to Justice Programme (AJP)**, which is support to the strengthening of the justice sector in Zambia.⁹ This would be an added contribution to Denmark's support to AJP and the anticipated German engagement.

With regard to the European Commission's contribution it is envisaged to enter into a delegated cooperation arrangement with the Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ) as implementing partner. Subject to approval by the Federal German Ministry for Economic Cooperation and Development (BMZ), GTZ will implement the delegated cooperation under the Good Governance Programme (GoGo) with an additional German contribution for technical assistance (TA) requirements. However, this can only be finally confirmed in late 2009 with TA funds only being available from 2010.

The capacity assessment serves the purpose to scrutinize the managerial, administrative, financial, and reporting and IT based capacities of the five Access to Justice institutions plus the Governance Secretariat with emphasis on the present status, gaps and needs for improvement and possible TA support. The assessment is expected to put particular emphasis on the procedures, formats and practices according to government's regulations and standard operation procedures. It will furthermore, compare the procedures and practices with GTZ's own standard operation procedures and requirements to manage the implementation of the delegated cooperation with emphasis on gaps and potential solutions for compliance. Additionally, the assessment is expected to make use – as far as this is relevant – of the regulations of the European Commission for compliance assessments and audit with the further aim to provide an overview of the compliance of government procedures as added piece of information.

The assessment will make use of an earlier exercise done on behalf of DANIDA in September 2006 by COWI on the financial management and progress monitoring and reporting capacity assessment of the six institutions.¹⁰ In this context, the GTZ assessment will be revisiting the conditions in the five institutions and hence contribute to establishing a baseline for future planning and monitoring under the European Commission's support.

A further Danish study of 2008 had addressed proposals for a suitable funding mechanism.¹¹ The discussions of the finding of this study resulted in a common understanding to house the funding mechanism in the Governance Secretariat, a view that was supported by the Danish

⁹ Action fiche for Zambia, Support to the strengthening of the justice sector in Zambia, Draft of January 2009.

¹⁰ Consultancy to Assess the Financial Management Capacity of Partner Institutions under the Access to Justice for All Components, Final Report by COWI for DANIDA, September 2006.

¹¹ Assessment of Selected Designs and Proposal for the Establishment of a Basket Funding Mechanism, 30 June 2008, commissioned by the Danish Embassy and conducted by NCG of Denmark.

appraisal mission. The report is expected to serve as an additional source of information for the GTZ supported capacity assessment.

The capacity assessment would be executed and funded jointly by development partners¹², thereby contributing to synergy and continuing the dialogue with the Zambian partner institutions. The results are expected to establish baseline information for use of planning and monitoring in particular. In the short-term, they will be used for dialogue with decision makers on the funding modality and the flow of funds as well GTZ's role and responsibility.

The mission is expected to take place in May and June 2009.

2. Access to Justice Programme

2.1 Goal, purpose, structure

Under the **Fifth National Development Plan (FNDP)** the Government of Zambia (GRZ) is committed to *"A Zambia where the citizens and the communities they live in have an opportunity to earn a dignified living, raise healthy and educated families, participate in economic, political, cultural and social decision making in a safe secure environment with respect for the constitution and fundamental rights and where rule of law prevails"*¹³. The **Access to Justice Programme**¹⁴ (AJP) will support these aims by ensuring easier access to justice for all, including the poor and vulnerable, women and children. The purpose of the programme is to support the development of an effective and accountable Justice Sector that is capable of meeting the needs and interests of poor, vulnerable and marginalised people.

The beneficiary institutions in the initial phase of the AJP include the Police, Director of Public Prosecutions, Legal Aid Board, the Judiciary and the Prisons. For planning and monitoring the implementation of the AJP the following structure has been established:

- Steering Committee (SC) consisting of heads of Access to Justice agencies for strategic policy setting and guidance across the Access to Justice sector
- Technical Committee (TC) consisting of Task Managers from the implementing AJP agencies for strategic planning, monitoring and supervision as well as coordination between the Access to Justice sector institutions
- Planning Units (PUs) in each of the implementing agencies consisting of existing institutional bodies for planning and budgeting and including the Task Managers for intra institutional coordination of AJP activities and integration into institutional administration and management
- Governance Secretariat (GS) funded primarily by GRZ with the mandate to oversee, coordinate and monitor initiatives relating to governance reform programmes including Access to Justice.

2.2 Current status of development support

The Danish Government supports the AJP through the bilateral Zambian – Danish Good Governance and Democratization Programme, which in its recently-appraised phase two is expected to be extended until 2012. The support structure includes long term advisory services. The Danish appraisal mission for the second phase of the Good Governance and Democracy Programme of February 2009 recommended to undertake an assessment of the six institutions

¹² GTZ is ready to fully cover the assessment.

¹³ This is the Super Goal as defined in the Fifth National Development Plan (FNDP) to which the AJP has been aligned.

¹⁴ Programme Document Access to Justice 2009-2011, May 2008, Final Draft.

and provided suggestions for establishing and managing a pooled grant making and capacity building mechanism for the Access to Justice Programme.¹⁵

While Denmark is the lead partner in the justice sector other development partners (DP) engaged in the justice sector in a broader sense are the European Commission and Germany who can be considered as active partners; and Finland, Norway, Sweden, The United Kingdom and the United States who can be considered as background partners.

The bilateral Zambian – German negotiations of December 2008 have taken note of the intended delegated cooperation on the Access to Justice Programme.¹⁶ This delegated cooperation would allow for broadening the support from development partners to the Access to Justice Programme in an aligned manner. Additionally, civil society organisations (CSO) are filling gaps in relation to service delivery and advocacy in support of access to justice at various levels and through support from a number of development partners and international non-governmental organisations.

To conclude: The capacity assessment though being a targeted intervention is an added contribution to the ongoing consultative process with key stakeholders from the involved institutions as well as cooperating partners. It aims at reengaging partners, builds on existing initiatives, learns from best practices, and contributes to bringing the intended pooled grant making and capacity building mechanism for the Access to Justice Programme forward.

3. Objective and scope of capacity assessment

3.1 Overall objective

Considering the positions established as a result of the financial management assessment of the access to justice institutions of 2006 and the proposal for the establishment of a basket funding mechanism of 2008, the GS has been recommended as lead partner. The assessment mission is expected to arrive at detailed recommendations in terms of specific responsibilities of the GS vis-à-vis the five institutions and also considering what capacities would be needed to plan, manage and account for the AJP funds allocated to them. This would also include options for strengthening their capacities in terms of decentralized administration, accountability and reporting vis-à-vis the coordinating and cross-cutting and therefore non-institution specific responsibility of the Governance Secretariat.

The overall objective of the mission is

- To carry out a fiduciary risk assessment and financial management capacity assessment and recommendations for improvements for the five beneficiary institutions and the GS. The mission is expected to make recommendations for strengthening the institutional capacity including options to implement devolved functions as implied in the Access to Justice Programme and vis-à-vis the GS.
- To identify TA needs in the six institutions for improving their managerial and financial capacity in implementing their contribution to the Access to Justice Programme. This assessment should be used as a basis to determine the need for and best possible use of three categories of technical assistance:

¹⁵ Ref. to appraisal mission's debriefing note of 11.02.2009 and the report: Draft Appraisal Report (Executive Summary) Support to Good Governance, Zambia, Phase II (June 2009- May 2012); Ref. to Danish Ministry of Foreign Affairs document: Draft Phase II Support to Good Governance Zambia, April 2009 – April 2012 Programme, October 2008.

¹⁶ Zambian – German intergovernmental negotiations of 17 December 2008, p. 10.

- i. TA that currently exists within the AtoJ Programme provided by DANIDA, and if necessary and assessable within this exercise, further long- and short-term TA to be provided by DANIDA.
- ii. Long term TA deemed necessary for the institutional and financial management capacity strengthening of the GS and the five institutions, to be provided by GTZ.
- iii. Other long and short term TA and expert support that may be required during implementation, which could be paid for out of the basket.

3.2 Tasks

The specific **tasks for the fiduciary risk assessment and financial management capacity assessment and recommendations** are the following:

- To analyse the managerial, administrative, procurement, financial and reporting regulations and procedures of the six institutions with emphasis on content and comprehensiveness, practicability and use
- To review relevant institutional documents and formats such as strategic plans, work plans, operational plans, budgets, financial reports and progress reports, accounting and cash books, procurement plans and procedures in terms of relevance and practical use
- To determine whether and to what extent regulations and procedures are established standard operation procedures and to what extent they are applied
- To review regulations, procedures and practical application of internal control and external audit and review reports
- To assess the credibility, comprehensiveness and transparency of the budgeting process of the six institutions
- To assess the predictability in the availability of funds from the Zambian Government for commitment of expenditures for the implementation of the Access to Justice Programme¹⁷
- To give an assessment of the IT status of the six institutions with a view on financial and physical planning and reporting in particular, including networking
- To determine gaps in the form of a synopsis in the fiduciary and management regulations and procedures in terms of compliance with GTZ's own standard operation procedures
- To review the Accounts Manuals that was developed with support from DANIDA with regard to its practicability and use
- To look into the organisational structures of the six institutions in terms of division of work at the various levels of hierarchy and function
- To review job descriptions and assess the professional capacity of personnel

In order to ensure that the CA is aligned with the requirements of the relevant services of the Commission, some reference should be made to the five pillars, as laid down in Article 26 of the EDF Financial Regulations:

- Transparent procurement and award procedures
- Effective and efficient internal control system
- Accounting system that enables the correct use of EDF resources
- An independent external audit
- Adequate annual ex post publication of beneficiaries of EDF funds

¹⁷ This would include to assess possible/expected funding from GRZ to Access to Justice related initiatives (reference Yellow Book 2007 and 2008, FNDP, Green Paper) through budget allocations to the Access to Justice institutions in particular and to other relevant Line Ministries and in this regard assess possibilities for such funding being: i. Planned together with funding from CPs to the AJP; ii. Report on/accounted for using the same formats and mechanism used by the Access to Justice Programme.

The specific **tasks for the TA needs' assessment and recommendations** are the following:

- To identify and define TA needs in the six institutions in terms of improving their managerial and financial as well as overall planning and reporting capacity, and as far as this is appropriate and realistically to be achieved by the mission, reviewing the compatibility of the job description for the current long term TA with the needs/challenges identified
- Specifying TA needs vis-à-vis GTZ's requirements to implement the delegated cooperation with a view on immediate to short-term and longer-term support
- To sketch measures for human resources development in the areas of planning, management and finances and inter-agency networking
- To recommend options for IT solutions in the area of planning, financial management and reporting¹⁸

3.3 Outputs

The mission is expected to provide a report, which includes the assessment and the recommendations in a manner that is simple and straight forward to use by the six organisations in their own efforts to implement the EU Commission's support and also by development partners in their efforts to support the Access to Justice Programme. Where ever possible a synopsis-type of presentation shall be done. For each institution the report should as a minimum include the following:

- Overall management and organisation, technical and professional capacity including staffing
- Managerial and financial capacity with a focus on planning, budgeting and budgetary control and reporting including internal control and external audit
- Hands-on proposals for improving the managerial and financial capacity with respect to e.g. formats for planning and reporting, accounting, management of advance received (imprest), audit modalities
- Status of IT with emphasis on planning and budgetary management, financial reporting and inter-agency networking
- TA needs for improving physical and financial management and human resources
- One or more stakeholder workshops to present and discuss findings and recommendations with a view to forward initiatives

The de facto compliance assessment with GTZ's regulations and standard operation procedures would also address the requirements of various stakeholders, e.g. Art. 26 of the Financial Regulation for the 10th European Development Fund and similar legal provisions of other supporting partners. However, in line with the Joint Assistance Strategy for Zambia Memorandum of Understanding, which provides guidance on aid harmonisation, recommendations will need to be inspired to the largest possible extent to principles of low transaction costs for government and alignment to national systems, when compatible with specific requirements of development partners.

¹⁸ Since we cannot assume compliance with GTZ's financial management systems and IT based accounting and financial reporting parallel systems have to be run, which nevertheless allow interchange of data. Compliance with GTZ's system would be a core condition to i. Be responsible for the financial allocations to the Access to Justice institutions for the implementation of activities and ii. Contribute to efficient fund management. The IT capacities could be addressed under a TA engagement at a later stage. The same applies to HRD in the institutions.

3.4 Approach

The core tasks will have to be surveyed in the institutions. The assessment mission will have to read through and review regulations, reports and formats, observe work flows, assess work place conditions and the like. Targeted interviews with key partners at management, administration and policy level shall be held. Additionally, resource persons shall be consulted. We strongly opt for a consultative approach, which incorporates not only the assessment, however, as important, the debate for pragmatic and practical solutions with the partners in the six institutions. In this sense, we opt for a kind of dialogue come learning approach.

3.5 Preparatory steps

Prior to field the mission the following should be clarified and agreed upon:

- TOR are to be made available to the six Access to Justice institutions for comments and inputs; the Steering Committee and the Technical Committee of the Access to Justice Programme are considered key partners in further discussing TOR and approach.
- A joint meeting of the Access to Justice institutions and the governing set-up is proposed for presenting the assessment and agree on the schedule and modes of support for the six Access to Justice institutions.
- The assessment will be based on a tight schedule, a large number of interviews with officers of the six institutions and a comprehensive review of documents; hence support to the mission during their visit to the institutions is pivotal.

The consultations with the Access to Justice institutions aim at arriving at commonly agreed upon TOR. It is suggested that the Access to Justice Programme Technical Committee functions as a working or steering group vis-à-vis the assessment mission and as such facilitates the link to the institutions and the Planning Units as well as other officers and information relevant to the CA. Such arrangement aims at ensuring an efficient and effective interaction.

3.6 Composition of assessment mission and skills required

The mission will consist of three consultants:

- i. One management consultant with profound experience of government structures and procedures.
Skills required: Organisational development, process management and facilitation experience, knowledge of the justice sector in Zambia, profound report writing, ability to work independently and in a team context.
- ii. One auditor or chartered accountant with profound experience in financial government regulations and procedures.
Skills required: Experience with government public finance management systems, regulations and procedures, work flows, financial reporting practices and systems, IT based accounting and reporting, sound auditing experience, knowledge of EU Commission's regulations and procedures of development partners, e.g. GTZ.
- iii. One senior GTZ financial and management specialist with profound experience of GTZ's and partner financial systems.
Skills: Experience in GTZ's financial systems vis-à-vis EU Commission's regulations and procedures, IT based financial systems for management and reporting of baskets / pooled funding, ability to relate GTZ's financial systems and requirement to that of the six Access to Justice institutions.

A total of up to 20 working days per consultant based on actual time inputs are estimated. Details of the programme, interview schedule and working through documentation need to be determined in cooperation with the Governance Secretariat and the involved Access to Justice institutions. The consultancy will take place during the period May to June 2009.

4. Background documents

- Financial Management Capacity Assessment, August 2006
- Assessment of Selected Designs and Proposal for the Establishment of a Basket Funding Mechanism, September 2009
- GS Accounts Manual
- Relevant institutional documents related to budgeting, budgetary control, accounting and cashbooks, procurement, internal control systems and internal as well as external audit reports and financial reporting,
- Relevant job descriptions
- Access to Justice Programme Document and other relevant AJP documents
- JASZ structure and MoU

5. Indicative list of persons and institutions to meet

- GS, Coordinator and Access to Justice Specialist
- Access to Justice Institutions, Steering Committee, Technical Committee and Planning Unit members and Accounts staff
- MoFNP, Permanent Secretary Budget and Accountant General Office, Mr. Muchima
- Cooperating Partners (Denmark, EC, Germany, Nordics)
- ZNTB, Mr. Njolombe

Annex 2: List of Institutions and Persons Met

Institution	Persons met	Function
Governance Secretariat	Mrs. Maria Kawimbe Mrs. Isabel Chiinji Mr. Christian Eldon Mr. Davies Chikalanga	Coordinator Finance Officer Danida Technical Advisor AtoJ Specialist
Legal Aid Board	Mr. Nkausu Mr. Ronald Banda Mr. Humphrey Mumbi Mrs. Zulu	Director Internal Auditor Accountant Human Resources
DPP	Mr. Chalwe Mchenga Mr. Ndalameta	DPP Principal Accountant MoJ
Judiciary	Mr. Peter Mwamfuli Ms. Mwamba Chanda Mr. Elias Sakala Mr. Charles Phiri Mr. Vincent Chileshe Mr. Fidelis Tembo Mrs. Chilufya Ngandu Mr. Tito Kayanika	Chief Administrator Director Court Operations D/ Director HR and Admin. Chief Accountant Senior Accountant Senior Internal Auditor Act. Snr. Procurement Officer Assistant Accountant
Police	Mr. Raphael Musamba Mr. Kajoba Mr. B. Kanungo	Commissioner Accountant Senior Accountant
Prison Services	Mr. Nawa Maxwell Lungu	Commissioner
Ministry of Home Affairs	Mrs. N.D. Mutiti Mrs. Hamaundu Mrs. Goma	Permanent Secretary Internal Auditor Chief Accountant
Ministry of Finance and National Planning	Mr. Emmanuel Ngulube Mrs. Tamara Ngoma	Permanent Secretary, BEA Chief Accountant
Auditor General	Mrs. Regina Chilupula Mr. Malamba Mr. Mbewe	Deputy Auditor General Acting Director A/Director
EC Delegation	Mr. Benoit Bazin Mr. Cahal Gilbert	Section Head Programme Officer
Danish Embassy	Mr. Peter Larsen Ms Ronah K Lubinda	Minister Counselor Programme Officer
GTZ	Mr. Robert Kressirer Dr. Dedo Geinitz Dr. Marion Popp (Mrs.)	GTZ Country Director Programme Leader, GoGo Programme Officer

Annex 3: Financial Management Capacity Assessment Questionnaire

1. Funds flow

- 1.1 Can the partner receive and transfer funds?
- 1.2 Are the arrangements to transfer the funds to the partner satisfactory?
- 1.3 Have there been major problems in the past in receipt of funds from Government/Ministry of Finance?
- 1.4 In the past, has the partner had any problems in the management of disbursements of donor funds?
Assessment (Funds Flow)

2. Budgets and budgetary control

- 2.1 Are budgets prepared for income and expenditure?
- 2.2 Are there clear written budget guidelines to guide budget preparation?
- 2.3 Are budgets realistic, based on valid assumptions and developed by knowledgeable individuals?
- 2.4 Is there a system that ensures that no expenditures are made before funds are actually available?
- 2.5 Are expenditures reviewed regularly with the approved budget?
- 2.6 Are budgets prepared for all significant activities in sufficient detail to provide a meaningful tool with which to monitor subsequent performance?
- 2.7 Who is responsible for preparation and approval of budgets?
Assessment (Budgets and budgetary control)

3. Accounting policies and procedures

- 3.1 Describe the basis of accounting (e.g. cash, accrual).
- 3.2 Are there written policies, procedures and guidelines covering all routine accounting and related administrative activities?
- 3.3 Does the partner have an accounting system that allows for the proper recording of financial transactions from donor agencies including the allocation of expenditures in accordance with respective components, disbursement categories and sources of funds?
- 3.4 Is the accounting function staffed adequately with experienced and qualified personnel?
(Review organisation charts, job descriptions)
- 3.5 Are controls in place concerning the preparation and approval of transactions, ensuring that all transactions are correctly made and adequately explained?
Assessment (Accounting Policies and Procedures)

4. Cashbooks

- 4.1 Are cashbooks maintained that are adequate, up to date, recording all receipts and payments?
- 4.2 Do controls exist for the collection, timely deposit and recording of receipts at each collection location?
- 4.3 Is a separate cash book kept for each bank account?
- 4.4 Are there clear guidelines on how to prepare cashbooks and are they adhered to strictly?

- 4.5 Are cashbooks reconciled to the bank statement on a monthly basis?
Assessment (Cashbooks)

5. Internal audit

- 5.1 Is there an independent internal audit department, or is the internal audit function exercised by the ministry, or the Auditor General's office?
- 5.2 Are approval and authorization controls in place and properly documented?
- 5.3 Does the partner have a bank account? Are they willing and able to open a separate bank account for Access to Justice Funds?
- 5.4 Are memorandum records of fixed assets and stocks (if any) kept separately and reconciled with control accounts? Are assets sufficiently covered by insurance policies?
- 5.5 Is there a mechanism that ensures that one person is responsible for the preparation, review and approval of a transaction before the release of funds?
- 5.6 Are there written policies setting out which members of staff can authorize expenditure at different levels of expenditure?
- 5.7 Are cashbook balances reconciled to bank statements on a monthly basis?
- 5.8 Are bank reconciliations prepared by someone other than those who process or approve payments? Are unusual items on the bank reconciliation reviewed and approved by a responsible official?
- 5.9 Is the internal audit function effective – are actions taken on audit findings?
Assessment (Internal Audit)

6. External audit

- 6.1 Are the partner's financial statements audited regularly by an independent auditor? Who is the auditor?
- 6.2 Are there any delays in the audit of the partner? When are audit reports issued?
- 6.3 Is the audit conducted according to International Audit standards?
- 6.4 Are there any recommendations made by the auditors in prior audit reports or management letters that have not yet been
- 6.5 Were there any major accountability issues brought out in the audit report of the last three years?
- 6.6 Has the partner prepared audit plans?
Assessment (External audit)

7. Financial reporting

- 8.1 Are financial statements prepared for the partners?
- 8.2 Has the partner established and documented financial reporting responsibilities that specify what reports are to be prepared, when they are to be prepared and what their content should be?
- 8.3 Are financial reports used by management?
- 8.4 Do the financial reports compare actual expenditures with budgeted and programmed allocations?
- 8.5 Are reports prepared regularly? Are they prepared monthly/quarterly/annually?
- 8.6 Are financial reports prepared directly by an automated accounting system or are they prepared by spreadsheets or some other means?
- 8.7 Is the partner familiar with the preparation of financial reports for donor funded activities?
Assessment (Financial reporting)

8. Information systems

- 8.1 Is the financial management system computerized?
- 8.2 Can the system produce the necessary financial reports?
- 8.3 Is the staff adequately trained to maintain the system?

Assessment (Information systems)

Annex 4: EC Questionnaire for the Assessment of Compliance with Criteria for Fully Decentralized Management (pooled Funds)

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>FIRST CRITERION: EFFECTIVE AND EFFICIENT INTERNAL CONTROL</p>		
<p>1. Control environment</p> <p>1.1 <u>Ethics and Integrity (Public Service values)</u></p> <p>Is there evidence that the entity stresses <u>ethical and integrity aspects</u> in its internal control? For example:</p> <ul style="list-style-type: none"> ▪ Written code of conduct that is communicated to all staff? ▪ Staff manual containing provisions promoting ethical behaviour and values? ▪ Other evidence of an organisational culture emphasizing the importance of integrity, values and ethics? ▪ Is there evidence that ethical aspects are publicly stressed towards the staff by top management of the entity? (“tone at the top”) ▪ Do the regulations of the entity foresee a responsibility (disciplinary sanctions, financial responsibility and personal liability) of officers who do not respect the rules? 	<p>There is a new code of conduct launched for the public service by the Secretary to the Cabinet about two months ago. It is a small booklet that has been circulated to all Ministries to forward to their staff members.</p> <p>However, it is still a new culture that has not yet taken root in all the institutions. At the moment, one cannot see yet any differences between the AtoJ institutions in this respect.</p>	<p>4</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>1.2 <u>Commitment to competence</u></p> <p>Is there evidence of a <u>commitment of the entity to promote the competence</u> of the officers and staff , for example:</p> <ul style="list-style-type: none"> ▪ Does an effective permanent performance appraisal system of the staff exist? Does this system take into consideration the roles of the staff in the internal control? ▪ Does the entity have an organised system of competence development plan of the staff that meets the development needs of individuals? (e.g. assessment of development needs, training development programmes) ▪ Do written <u>human resources policies and practices</u> exist ensuring that competent, trust-worthy personnel is recruited, developed, promoted and retained? 	<p>Staff appraisal exists in the form of the APAS (Annual Performance Assessment System). The system has been in place for the past three years. Before any promotion is made, there is such a form to be filled in, first by the staff member himself/herself, and then to be confirmed and agreed upon with the respective superior. This is then sent to Cabinet Office, Public Service Management Division.</p> <p>For the accounting sections, there is a systematic training plan. There is a human resources development plan maintained by Cabinet Office, DHRD Department of Human Resources Development. However, there are still deficiencies with respect to thorough planning and follow-up.</p> <p>There are guidelines for human resource policies that are standard across Government, but the individual positions are not clearly specified.</p>	<p>3</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>1.3 <u>Management structure</u></p> <p>Does the entity appear to have a <u>sound governance and oversight structure</u>? For instance:</p> <ul style="list-style-type: none"> ▪ Does there exist a clear definition of the main “corporate governance” actors of the entity and of their respective roles and responsibilities (for example oversight authorities, audit committee, regulators, governing board, executive body, internal audit body, external audit body)? ▪ Does the entity have adequate oversight bodies? ▪ Do sound rules exist regarding the appointment, termination and remuneration of members of such committees? ▪ Is there a clear and open line of communication among the main governance actors of the entity? ▪ Are there frequent links of communications between these bodies, and are these in relation with the size and complexity of the entity? ▪ Are the members of the main governance bodies of the entity independent from management? 	<p>A clear governance and oversight structure does not exist.</p>	<p>n/a</p>
<p>Is a clear <u>organisation chart</u> available, which describes:</p> <ul style="list-style-type: none"> ▪ The entity's key areas of authority and responsibility? ▪ Well-defined reporting/delegation lines? 	<p>An organisational chart is a standard instrument that basically exists for all Government institutions with responsibilities outlined to a certain degree. However, it is not always updated promptly by Management Development Division, Cabinet Office which is responsible for this.</p>	<p>2</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>2. Objectives setting</p> <ul style="list-style-type: none"> ▪ Does the entity have in place a process to <u>set objectives</u> and to ensure that the chosen objectives support and align with the mission of the entity? ▪ Are objectives providing clear guidance on what the entity wants to achieve? ▪ Does the entity follow a management plan? 	<p>In the FNDP, every Ministry and Spending agency has set its objectives. Out of these, every Ministry has to develop more detailed objectives for the Medium Term Expenditure Framework rolling budget and the annual budgeting process.</p> <p>The process of phrasing a new FNDP has just started on the basis of a mid-term review.</p>	<p>2</p>
<p>3. Risk management process</p> <ul style="list-style-type: none"> ▪ Is there <u>evidence that a risk management process exist</u> and allows management to identify, assess and address existing or potential issues that may hamper the achievement of the entity's objectives? ▪ Has the entity prepared a description of its risk assessment processes? ▪ How does the entity: <ul style="list-style-type: none"> i. Identify events and risks affecting the achievement of the objectives? ii. Analyze the significance of risks and the likelihood of their occurrence? iii. Determine the actions and follow-up mechanisms needed in response to the risks? iv. Implement and modify controls to respond to changes in identified risks? 	<p>This is not systematically done by each Government institution separately. For the achievement of the Millennium Development Goals, however, there is an annual assessment process that takes into consideration the risks involved in reaching these.</p>	<p>4</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>4. Control Activities</p> <p>4.1 <u>Policies and procedures</u></p> <p>Are there <u>adequate policies and procedures</u> (for example, sufficiently detailed financial regulations and rules, implementation guidelines, etc) governing the control of the activities to ensure the correct application of the internal rules and an effective fulfillment of the objectives?</p>	<p>There are policies and procedures in place that are applicable for all Government institutions, in line with the Public Finance Act of 2004 and the Financial Regulations, Statutory Instrument No. 111 of 2006.</p>	<p>1</p>
<p>4.2 <u>Segregation of duties of authorizing officer and accounting Officer</u></p> <ul style="list-style-type: none"> ▪ Is there an effective segregation between the function of authorizing officer (i.e. person having the mandate to authorize transactions from an operational and/or financial side) and the function of accounting officer (i.e. person having the authority to execute payments) – or of the equivalent functions? ▪ Are these two actors neither formally nor practically subordinated to each other (i.e.: check that there is no hierarchical relation between them)? 	<p>The segregation is in place at Departmental level. However, the Controlling Officer has the final authority and can overrule the accounting officer and insist on certain decisions with financial implications against the advice from accounts. In the Ministries, accounts are under HR Department and therefore not placed in a very strong position. Even the Auditor General is only at the level of a Director under PS FMA, MoFNP.</p>	<p>4</p>
<p>4.3 <u>Segregation of duties (general)</u></p> <p>Is an adequate level of <u>segregation of duties</u> foreseen?</p> <ul style="list-style-type: none"> ▪ Do the rules and procedures of the entity foresee the principle of segregation of duties? ▪ Is there indication that segregation of duties is present between authorizing transactions, processing transactions, recording transactions, custody of values, reviewing transactions? ▪ Do operational and financial supervision functions exist? 	<p>As above.</p>	<p>4</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>4.4 <u>Safeguarding of assets</u></p> <p>Are there proper measures in place to adequately <u>safeguard and value the assets</u>, for example:</p> <ul style="list-style-type: none"> ▪ Is the access to assets separated from the other functions? ▪ Are adequate prevent controls in place? (for example a separate treasury function, double signature systems on the bank accounts, system of earmarked bank accounts for specific actions) ▪ Are the access rights to assets and funds restricted? ▪ Are assets regularly inventoried (e.g. physical inventory, confirmations) ▪ Is their value in the accounts regularly reviewed (e.g. impairment of assets, provisions for irrecoverable credits, etc)? 	<p>Asset registers are not there or not properly maintained. Under IFMIS, this is to be rectified. But so far, it has been weakened through the decentralized procurement system.</p> <p>This system is even aggravated by the cash accounting system.</p> <p>Double signature system of bank accounts is in place.</p>	<p>4</p>
<p>4.5 <u>Verifications</u></p> <p>Do the procedures of the entity foresee <u>appropriate verifications</u>? For example:</p> <ul style="list-style-type: none"> ▪ Verifications by the department heads of their officers? ▪ Verifications by an operational / financial supervisor? ▪ Systematic routine verification or verification on the basis of tests? ▪ Is there a distinction in verification procedures between own resources and mandated ones? 	<p>Theoretically, rules for verification are there. But it is not really done in practice.</p>	<p>4</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>4.6 <u>Fraud</u></p> <p>Are appropriate measures taken to <u>prevent and detect fraud</u>, for example:</p> <ul style="list-style-type: none"> ▪ How are posts with risk of collusion identified (e.g. sensitive posts such as authorizing officer, financial verification, etc.)? ▪ Are mitigating measures taken in case of sensitive posts (rotation, additional controls, etc)? ▪ Are there procedures to report improprieties and are they followed up? ▪ Is there a unit responsible for anti fraud actions and investigations? 	<p>There is a routine of rotation of chief accountants and senior accountants (under MoFNP) and procurement officers (under ZPPA) every five years. However, there is a weakness in following this routine.</p> <p>The separation of duties is also not systematically followed, so collusion is present.</p> <p>In some Government institutions, such as ZRA, there is a unit for anti-fraud action and investigations. But this is not the case for the AtoJ institutions.</p>	4
<p>4.7 <u>Operating performance</u></p> <p>Are there <u>measures to review operating performance</u>:</p> <ul style="list-style-type: none"> ▪ Are policies, programmes and activities evaluated ex-ante, during implementation and ex-post? ▪ By whom are these evaluations performed? ▪ Is there a service within the entity specifically responsible for the evaluation of operating performance? To whom does it report? ▪ Are evaluation reports on the actions prepared and how are they communicated and followed up? ▪ What elements do these evaluations cover, e.g.: <ul style="list-style-type: none"> i. Achieved impact? ii. Efficiency? iii. Effectiveness? iv. Alignment with the objectives? v. Are these performed ex-ante, during the actions or ex-post? 	<p>Performance reviews are there, on a quarterly basis at PS level. The PSs have to report on their progress, through an internal reporting process. This process, however, only covers aspect of budget execution, and not any other performance aspects.</p> <p>The AtoJ institutions are generally not represented by a PS per se, and therefore not directly subject to this routine.</p>	4

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>5. Communication and Information</p> <p>Are there appropriate channels and means to communicate and process information? For instance:</p> <ul style="list-style-type: none"> ▪ Is there sufficient communication with decentralized locations or offices in external countries? ▪ Does the entity use appropriate information technology? Does it have an appropriate information management system (ERP) in place? Are there measures to ensure the security of electronic information systems? ▪ Do the information and accounting systems allow timely financial reporting? ▪ Are there procedures to request and grant exception to procedures and are they followed up? 	<p>There is not a very effective communication and information channel system in place, waiting for the implementation of IFMIS. At the moment, it is composed of stand-alone systems and requires physical transfer of data through diskettes.</p>	<p>4</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>6. Monitoring</p> <p>Is an ongoing monitoring/follow-up system established to ensure the timely and effective implementation by management of the internal and external audit, control and evaluation findings? For example:</p> <ul style="list-style-type: none"> ▪ Does management respond timely and appropriately to recommendations on internal control from internal and external auditors? ▪ Are there procedures to report internal control weaknesses? ▪ Are the reported internal control weaknesses followed up? Is remedial action taken? ▪ Is the internal audit function well organised? ▪ Is there a periodic evaluation of the state of internal control? Does Management issue an annual report/declaration on its assessment of internal control? ▪ Are there procedures for handling and following up disputes and the recovery of funds? 	<p>The monitoring system is very weak and there is hardly any systematic follow-up in place.</p> <p>The Public Finance Act provides that Government institutions have to introduce Audit Committees that even include non Government employees to verify the internal audit results. These Committees should meet four times a year.</p> <p>(TO BE VERIFIED FOR AtoJ INST.)</p>	4
<p>7. Application of the standards at implementing partner / project level (if applicable)</p> <ul style="list-style-type: none"> ▪ What kind of verifications are in place to assess the reliability, capacity and efficiency of organisations that implement projects on behalf of the entity? ▪ Has the entity defined the minimum internal controls to be implemented by implementing partners and recipients while implementing the funds (e.g. Manuals to implementing partners, procurement guidelines for implementing partners...)? ▪ Does a plan exist to audit the use of funds managed by implementing partners? How is the scope set? How is 	n/a	

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>the plan adapted to findings? Does the plan cover the financial, compliance and performance aspects? (see also the questions in the Audit pillar)</p> <ul style="list-style-type: none"> ▪ How does the entity monitor and follow-up these audits? 		
<p>SECOND CRITERION: Accounting</p>		
<p>1. General</p> <p>1.1 Is the entity governed by a financial regulation which prescribes rules for the preparation and presentation of accounts, referring to international standard setting bodies? If not what accounting rules does it follow?</p>	<p>There are financial regulations for Government accounting; however these do not refer to international standards for public accounts.</p>	<p>4</p>
<p>1.2 Do the financial regulation or rules of the entity require specific accounting on a fund, programme or project basis? Are other trust funds already managed?</p>	<p>There are only general regulations, but no specific regulations for projects. They are generic.</p>	<p>n/a</p>
<p>1.3 Under what basic principle are the financial statements of the entity prepared:</p> <ul style="list-style-type: none"> ▪ Accrual basis of accounting? ▪ Cash basis of accounting? ▪ Modified cash or modified accrual basis of accounting (i.e. mixed)? 	<p>Cash accounting</p>	<p>3</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>2. Identified best financial reporting practices</p> <p>2.1 Does the entity present a <u>clear and complete set of financial statements</u> consisting of:</p> <ul style="list-style-type: none"> ▪ A statement of assets, liabilities and fund balances (statement of financial position)? ▪ A statement of financial performance (income and expenses / revenue and expenditure)? ▪ A statement of changes in financial position or a statement of changes in reserves and fund balances? ▪ A statement of cash flows? ▪ A description of the accounting policies used indicating the accounting framework used? ▪ Appropriate notes and disclosures in annex to the financial statements? 	<p>The statement only lists income and expenditure for the current period, compared against the budget.</p>	<p>4</p>
<p>2.2 Are the financial statements set up with regular periodicity? Are they set up at least annually?</p>	<p>The income and expenditure returns are done monthly, with Financial statements being done annually.</p>	<p>2</p>
<p>2.3 Are the financial statements presented <u>consistently</u> with the previous reporting period?</p>	<p>The format is consistent, but there is no comparison with the previous period.</p>	<p>4</p>
<p>2.4 Do the financial statements present <u>comparative financial information</u>? (e.g. for the previous reporting period)</p>	<p>As above</p>	<p>4</p>
<p>2.5 Is there any indication that assets or liabilities or revenue and expenses <u>have been offset</u> in the financial statements?</p>	<p>Financial statements of Government only compare expenditure with budget provisions. The financial statements of Government only show the budget provisions and the expenditure disclosed at programme level. The appropriations in aid (other revenues) are not offset.</p>	<p>4</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>2.6 Is there any indication that the financial statements have been <u>fairly presented</u>? For example:</p> <ul style="list-style-type: none"> ▪ Does Management present a statement, report or declaration of fair statement with the financial statements? ▪ Does the external audit opinion contain qualifications? Are there otherwise indications in the audit report of significant issues? ▪ Does the audit report confirm the adequacy of the accounting standards used by the entity? (For example IPSAS, IFRS, UNSAS, other...) ▪ Do the notes to the financial statements disclose <ul style="list-style-type: none"> i. The accounting framework used? ii. The basis of preparation of the financial statements? iii. The specific accounting policies that are necessary for a proper understanding of the financial statements? ▪ Are the notes to the financial statements presented in a systematic manner? ▪ Are the items on the face of the statement of financial position, statement of financial performance, and statement of cash flow cross-referenced to the related information in the notes? 	<p>The financial statements are fairly presented.</p> <p>The External audits by OAG express an opinion on the financial statements, including qualifications. Significant issues are reported in the OAG report. However, the international standards (IPSAS, IFRS, UNSAS) are not used.</p> <p>In the Financial report 2007, the Police and Prisons did not get any qualifications on the basis of an external audit.</p> <p>However, the OAG report raised serious issues with respect to procurement in Police.</p> <p>There are no explanatory notes on the financial statements.</p>	4
<p>2.7 Are the accounting policies of the entity adapted to the nature and complexity of its activities? Do they appear to cover the important elements of the accounts?</p>	<p>In general, accounting policies are not comprehensive enough.</p>	4

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>3. Other good practice disclosures</p> <p>3.1 If not disclosed elsewhere in information published with the financial statements, do the financial statements disclose:</p> <ul style="list-style-type: none"> ▪ The address and legal form of the entity and jurisdiction under which it operates? ▪ The nature of the entity's operations and principal activities? ▪ The reference to the relevant legal framework governing the entity's operation? ▪ The name of the controlling entity (where applicable)? 	n/a	n/a
<p>3.2 Do the financial statements disclose additional information which could be considered as good practice in the public sector, such as:</p> <ul style="list-style-type: none"> ▪ Budgetary comparison reporting in which appropriations, disbursement, uncommitted balances are shown? ▪ Schedule or summary showing the status of voluntary contributions pledged by financing entity (e.g. country) at the reporting date? ▪ Schedule or summary by programme activity for the reporting period? ▪ Schedule or summary showing the status of accounting of trust funds managed on behalf of other parties (if applicable)? ▪ Overviews of the financial investments as at the reporting date (e.g. time deposits, marketable securities)? 	Budgetary comparison reporting in which appropriations, disbursement, uncommitted balances are shown in quarterly reports by the Accountant General's Office, and published on the MoFNP website.	2
<p>3.3 If the entity does not produce financial statements showing the detail outlined in 3.2, above, how otherwise will it assure the separate presentation of the use of European Community funds?</p>	At the moment, Government does not present revenue and expenditure reports separately by funding source.	n/a

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>4. Accounting system</p> <p>Describe the accounting system: are there procedures to ensure the exhaustiveness of revenue; checks that expenditure and revenue are not offset; a system for accepting and authorizing transactions including amendment and deletion of data? Describe the accounting process, including the electronic processing of data; reporting procedures, uses made of accounting records and supporting documents; protection of software, back-up systems and access control.</p>	<p>So far, the accounting system is manual.</p> <p>Receipt books with consecutive numbers are used for all Government revenue sources, including local courts fees, or the fees applicable at the Legal Aid Board, and returns submitted to the MoFNP. Scheduled Releases to these institutions are then balanced against these revenue statements.</p>	3
<p>5. Application of the standards at implementing partner / project level (if applicable)</p> <p>5.1 For funds managed by implementing partners or granted to beneficiaries, does the entity require the partner or recipient to submit financial statements covering the programme or project? Are they specific purpose financial statements or general purpose financial statements?</p>	<p>The Legal Aid Board is the only grant aided institutions (among the AtoJ institutions) and is supposed to provide such general purpose reports, to be attached to the financial statements of the grant-giving institution. However, while such a financial statement report is prepared, it is usually not attached.</p>	(3)
<p>5.2 Has the entity developed guidelines to implementing partners specifying the accounting and financial reporting requirements to be followed? What are the key features of these guidelines?</p>	n/a	

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
THIRD CRITERION: External Auditing		
1. National Institution for independent, external auditing 1.1 Is there a law or decree relating to the creation, entity and functioning of a national audit institution or other form of control or independent inspection body? 1.2 If so, what guarantees the independence of such a body, and what is its mandate? 1.3 Is the entity in question audited by the national audit institution? If so are Terms of Reference established? 1.4 What is the periodicity/targeted coverage of the audits? To what extent are audits carried out?	Yes, it is a constitutional requirement according to the State Audit Act. The OAG submits their findings to the President who forwards them to Parliament for scrutiny in the Public Accounts Committee. (To be verified with OAG) 1.3	2
1.5 What types of audits are being performed at the entity: <ul style="list-style-type: none"> ▪ Financial audits? ▪ Compliance audits? ▪ Performance audits? ▪ Audits of specific subjects (e.g. audits of procurement procedures, IT audits...)? ▪ Other? 	Financial audits and compliance audits? Performance audits are planned, but not conducted yet routinely. In case of need, forensic audits are also carried out.	2
1.6 By whom are the audits performed: <ul style="list-style-type: none"> ▪ Supreme Audit Institutions? ▪ External professional audit firms? ▪ Audit bodies from other organisations? ▪ Other? 	OAG = Supreme Audit Institutions plus contracted External professional audit firms.	1

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>2. Auditing standards</p> <p>2.1 Where audits are carried out, are they performed by auditors who meet the <u>basic ethical standards</u>?</p> <ul style="list-style-type: none"> ▪ independent, objective, impartial ▪ possessing the necessary professional competence in the audit field ▪ performing the audit work with due professional care ▪ (for all types of audits and types of auditors involved - see above) 	<p>Independent, although OAG received funding from the OAG. However, the OAG budget is protected through a respective PAF indicator.</p> <p>Accountants of OAG are generally well qualified.</p>	<p>2</p>
<p>2.2 Where audits are carried out, do the documents evidence that they are <u>performed in accordance with generally accepted auditing standards</u> as referred to above? For example:</p> <ul style="list-style-type: none"> ▪ auditing standards used ▪ evidence of audit planning ▪ clarity of audit scope ▪ type and use of sampling techniques ▪ consideration of a risk-based audit approach ▪ consideration of internal controls ▪ use of concept of materiality ▪ type and quality of audit reports available 	<p>Yes.</p>	
<p>3. Application of the standards at implementing partner / project level (if applicable)</p> <p>3.1 For funds managed by implementing partners or granted to recipients, does the entity foresee specific audit requirements?</p>	<p>OAG audits also grant aided institutions, including Legal Aid Board.</p>	<p>2</p>
<p>3.2 By whom are such audits performed?</p> <ul style="list-style-type: none"> ▪ Auditors appointed by the implementing partner? ▪ Auditors appointed by the entity? ▪ Other? 	<p>As long as the money to be spent is considered Zambian public funds, the Auditor General is mandated to audit. The OAG, however, can appoint and subcontract an external audit firm to do the audit.</p>	<p>1</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>3.3 Does the entity require the implementing partner or recipient to submit audit certificates for the programme or project? In such case, has the entity established terms of reference for such audits, requiring the auditors to be independent and meet the basic international auditing standards, and defining the requirements of their work? What is the periodicity/targeted coverage of such audits?</p>	<p>The responsible Ministry is required to submit audited certificates for the grant aided institution.</p>	<p>(2)</p>
<p>3.4 Does the entity otherwise perform audit verifications (other than audit certificates) of the projects managed by partners? By whom are such audits performed? (external auditors, internal audit department, other) Has the implementing organisation established terms of reference and specifications for such audits? Are they required to be performed in accordance with internationally accepted auditing standards?</p>	<p>Upon request and against reimbursement of cost, the OAG performs audits according to international audit standards, in conformity with the requirements of the requesting institution. This kind of audit may be subcontracted to a private auditing company, if the OAG capacity is not sufficient to carry out this extra work.</p>	<p>2</p>
<p>FOURTH CRITERION: PROCUREMENT</p>		
<p>1. Transparency 1.1 Do the texts set out the <u>obligation to comply with the principle of transparency</u>?</p>	<p>In theory yes, but not always complied with.</p>	<p>2</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>1.2 Are there <u>adequate publication measures to ensure transparency</u> of the procurement process? For example:</p> <ul style="list-style-type: none"> ▪ Do the texts mention the conditions under which publication must be made? ▪ Are there any exceptions foreseen to the obligation of publication? If so, are these well-defined? ▪ Do the texts mention the type of information that must be published (e.g. pre-information notice, tender notice, award notice, etc.)? ▪ Is there a mention of the methods to be followed for publication (electronic advertising, paper advertising, etc.)? ▪ Are the information and documents which must be provided with the invitation to tender clearly specified? ▪ Is there a clear mention of the specifications regarding selection and exclusion criteria, award criteria, evaluation criteria? ▪ Are the terms and conditions of the contract clearly published with the tender? 	<p>In theory yes, but not always complied with, especially since not all officers involved understand all the requirements.</p> <p>Practical aspects of the tendering process under the current AtoJ Programme and its administrative set-up (responsibility of Tender Committee in MoJ) are also preventing the adherence to the rules in place.</p>	2
<p>1.3 Do the texts contain <u>measures regulating the circumstances and conditions of contacts between the contracting authority and the candidates</u> during the submission period? Are there measures to prohibit contacts between the contracting authority and the candidates during the evaluation process?</p>	<p>The rules restricting contacts are there, but it is difficult to control.</p>	2

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>1.4 Are there proper <u>measures to ensure transparency of the award decision</u>? For example: Is there an obligation to document in writing the major steps of the evaluation process, for example:</p> <ul style="list-style-type: none"> ▪ Opening of tenders? ▪ Assessment of the eligibility of tenderers and conformity of tenders? ▪ Decision taken as a result of the evaluation? ▪ Is the content of the minutes of the above-noted decisions clearly specified (e.g. description of the proposals, quotation obtained by each candidate, etc.)? ▪ Are there measures to ensure publication of the results of the tender evaluation? 	<p>Except for the obligation of publication of the tender evaluation, all other requirements are in place.</p>	<p>2</p>
<p>2. Non-discrimination and equal treatment 2.1 Do the texts set out the <u>obligation to comply with the principles of non-discrimination and equal treatment</u> of all candidates?</p>	<p>Yes, however, it is Government policy to favor Zambian companies.</p>	<p>2</p>
<p>2.2 Do the texts contain provisions to guarantee <u>equal access to all candidates</u>, for example:</p> <ul style="list-style-type: none"> ▪ Absence of restriction to certain candidates? ▪ Adequate tender solicitation and advertising measures to ensure the broadest possible participation? ▪ Provisions to ensure that the tender specifications do not contain unjustified obstacles to access by certain candidates? ▪ From a technical viewpoint? ▪ From timing viewpoint (e.g. is there a reasonable time foreseen for the submission of tenders)? ▪ From an administrative viewpoint (e.g. selection, exclusion and award criteria)? 	<p>Yes.</p>	<p>2</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>2.3 Are there measures to ensure <u>equal and impartial treatment</u> of the candidates? For example:</p> <ul style="list-style-type: none"> ▪ Are there measures to ensure that all candidates are treated equally? ▪ Are there measures to ensure that all candidates benefit from the same information? ▪ Are there measures to ensure the impartiality of the evaluations, such as: <ul style="list-style-type: none"> i. Opening of tenders only after submission date ii. Protection of confidentiality of tenders iii. Existence of opening/evaluation committees iv. Evaluation criteria fixed before the tender opening and unchanged during the evaluation process v. Documentation of the evaluation, allowing subsequent verification of the decision vi. Prohibition of internal and external influences on the evaluators (lobbying, political, etc) 	<p>Yes, procedures are in place.</p>	<p>2</p>
<p>3. Use of tendering procedures 3.1 Do the texts set out the <u>obligation to use tendering procedures</u>?</p>	<p>Yes, with very tight thresholds, although these were recently revised.</p> <p>However, there is sometimes a lack of transparency in the process and timeframes within which a decision from the tender committee should be expected are not kept.</p>	<p>2</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
<p>3.2 Is there a <u>clear description of the different tendering procedures foreseen</u>? For example:</p> <ul style="list-style-type: none"> ▪ Different types of procedures (Negotiated, simplified, open tender, etc.) ▪ Is there a clear indication of the circumstances and conditions under which each procedure must be used? ▪ By type of procurement? ▪ By value of procurement (thresholds)? <p>For each type of procedure do the texts clearly foresee:</p> <ul style="list-style-type: none"> ▪ The methods for soliciting bid? ▪ The publicity measures to be followed? ▪ The method of presentation of the tenders, ensuring their confidentiality? ▪ The guidelines to be applied regarding the time limits for submission of the tenders? ▪ The functioning of the evaluation/ contract award procedure? ▪ The regulation of contacts between the contracting authority and the participants ▪ Do the texts allow the possibility to use alternative procedures (e.g. negotiated procedure) and in such case do they specify clearly the conditions for doing so? ▪ Is there a mention on which body (department, unit) is responsible for launching, executing and implementing the procurement procedure? 	<p>Yes, all is in place, however, the specifications for negotiated procedure differs between Government and EDF regulations. While EDF procedures only allow for a negotiation with technically compliant bidders, the Government procedure foresees the negotiation with the cheapest bidder.</p>	<p>2</p>
<p>3.3 Is the <u>existence of opening and evaluation committees foreseen</u> in the texts, including for example:</p> <ul style="list-style-type: none"> ▪ A clear description of the role, function, composition, and operating of such committees? ▪ Rules ensuring that the members of the committees are independent from each other? 	<p>Yes.</p>	<p>2</p>

Questions to evaluate the compliance with the criterion	Observations of the authors, based on available documents and enquiry of the entity subject to assessment	Authors' Assesmt
3.4 Are there <u>measures ruling out all conflicts of interests</u> <ul style="list-style-type: none"> ▪ For the officers evaluating the tender and awarding the contract? ▪ For the candidates? 	There is the question of declaring interest at the start of the evaluation sessions.	2
3.5 Is there a clear mention of the <u>sanctions</u> applicable: <ul style="list-style-type: none"> ▪ In case of misprocurement (i.e. expenditure not procured in accordance with the foreseen rules)? ▪ In case of fraud or corruption during the procurement process? 	There are disciplinary measures specified in the Public Procurement Act.	2
4. Best value for money 4.1 Is there a proper mention on the <u>obligation of compliance</u> with the principle of best value for money?	While value for money is mentioned, the emphasis is clearly on the price, at the expense of quality.	3
4.2 Is there a <u>clear mention of the criteria to be applied to select the best value for money tender?</u> (e.g. automatically lowest price, or price/quality ratio, or other)?	Emphasis is on lowest price, although not explicitly specified.	3
FIFTH CRITERION: GRANT AWARD PROCEDURES		n/a

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