

ARTICLE ON THE ZAMBIAN CRIMINAL JUSTICE SYSTEM AND THE PLACE FOR VICTIMS OF CRIME

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ABSTRACT

Criminal law is that branch of law that deals with offences that are against public morality and punishable by law. Criminal law operates through a complex system known as the Criminal Justice System. The Zambian criminal justice system is an arrangement that consists of the sources of criminal law in Zambia, the institutions and personnel that are involved in the implementation and enforcement of criminal laws in Zambia. Among the functions of the criminal justice system are to ensure that people know where to find the law; once they know where to find the law, they must also understand what the law is about, for example they need to appreciate the nature of the law and what it seeks to provide for. After understanding what it stands for they should know how this law can protect them. It is undisputed that law has several functions one of which is to protect society. There are a number of institutions that have been established to deal with crimes which include the Zambia Police Service; The National Prosecution Authority; The Courts and other stakeholders. Criminal law operates under a number of theories which include the deterrent theory, reformatory and retributive theories. However, despite the efforts that the Zambian government is putting in to curb crimes, Zambia continues to experience high levels of crime. Crime has increased by 62.45%ⁱ in the past three years which is worrisome. Much of the focus on crime is put mainly on the offender, and once the offender is dealt with, the case ends there. One very important aspect of criminal law is the plight of the victim. It appears that the victim of crime has no place in the Zambian criminal justice system as they are left to their families and communities to be taken care of. This could actually have a negative impact on the entire criminal justice system which needs immediate attention. Perhaps it could be one of the reasons why the crime level keeps escalating. It is worth noting

that if victims of crime were to have a special place in the criminal justice system, this can help in crime prevention and punishment.

INTRODUCTION

The Criminal justice is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. Those accused of crime have some protections against abuse of investigatory and prosecution powers. Criminal justice system refers to the collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded. The criminal justice system consists of three main parts: (1) Legislative (create laws)-law enforcement (police, sheriffs, marshals); (2) adjudication (courts which include judges, prosecutors, and defense lawyers); and (3) corrections (prison officials, probation officers, and parole officers). In a criminal justice system, these distinct agencies operate together under the rule of law and are the principal means of maintaining the rule of law within society.

THE LEGAL FRAMEWORK OF THE CRIMINAL JUSTICE SYSTEM

(a) The Constitution of Zambiaⁱⁱ

The Zambian constitution is a set of laws, customs and principals by which the state is acknowledged to be governed. The Zambian constitution is the supreme law of the land. This means that is the most important law; all laws must conform to the provisions of the constitution, and any law not in line with the constitution is null and void to the extent of its inconsistency.ⁱⁱⁱ Further, the constitution of Zambia under Article^{iv} states that every person shall be entitled to:

- (a) life, liberty, security of the person and the protection of the law;

This equally applies to victims of crime. They need their lives to be protected; they need to feel secure so as to lead a reasonable life and not fear for their lives and lives of their loved ones; they need the protection the law. This protection of the law must not only be during the time the case is reported to the police and after sentencing, but also it must be after the whole case is concluded. This also touches on the wellbeing of the victim even after the case is concluded. Some of the crimes that are handles, may have been committed by members of gang, who may not have been apprehended at the time the case was reported. There is a possibility that they pose a threat to the life of the victim. The family of the accused as well as close acquaintances may also pursue the victim. It is also a well-known fact that some victims of crime may even experience some form of stigma, e.g. victims of rape and gender based violence. The Constitution of Zambia^v further provides for the principle of non-discrimination.

“23. [Protection from discrimination on the ground of race,etc.]

(1) Subject to clauses (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to clauses (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this Article the expression "discriminatory" mean, affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”

Discrimination means receiving less favorable treatment as compared to others. In this case, the victims of crime may receive less favorable treatment from society, their friends or family members by virtue of being victims of certain crimes. For example, some victims of rape may contract HIV, STIs or even fall pregnant, this causes them to be ridiculed by some sectors of society. Sometimes the impact that the traumatizing experience had on

them may lead to depression, stress, impact on their health, sometimes even anti-social behaviour. Interestingly, it can rightly be said that not taking care of the victims of crime is discriminatory as well as a violation of human rights protected in the constitution.

(b) The Penal Code^{vi} and Criminal Procedure Code^{vii}

The Penal Code Act Chapter 87 of the Laws of Zambia (PC) is the primary Act that codifies crimes and provides for their corresponding penalties in Zambia. The primary Act that prescribes the process to be followed during the course of criminal proceedings- the arrest, trial and sentencing of a person who has been accused of having committed a crime is The Criminal Procedure Code Act Chapter 88 of the Laws of Zambia (CPC). In order to successfully prosecute GBV cases, the provisions of this Act are applied.

(c) The National Prosecution Act^{viii}

The National Prosecution Authority Act is one of the main laws in the Zambian Criminal Justice System. This Act to establishes the National Prosecution Authority and provides for its powers and functions; provides a framework for the effective administration of criminal justice; establishes the Witness Management Fund; and provides for matters connected with, or incidental to, the foregoing. This Act does not make any provision for the victims of crime, except for witnesses. This is provided for in Sections 15-17^{ix} as follows:

“THE WITNESS MANAGEMENT FUND 15.

(1) There is hereby established the Witness Management Fund.

(2) The Fund shall consist of—

(a) such moneys as Parliament may appropriate for the purpose of the Fund;

(b) voluntary contributions to the Fund from any person or organisation;

(c) any grants mobilised from any source within or outside Zambia for the purpose of witness management; and

(d) interest arising out of any investment of the Fund.

16. The Fund shall be vested in the Minister responsible for finance and shall be managed and administered by the Board.

17. The Fund shall be used for— (a) the ferrying of witnesses to and from court; (b) the counselling of witnesses before testifying in any matter before court; and (c) any other matter relating to witness management.”

(d) The National Prosecution Authority (Amendment) Bill, 2023

The amended Act only provides for issues to deal with the National Prosecutions Board.

(e) The Anti-Human Trafficking Act^x

This Act makes provision for the prohibition, prevention and prosecution of human trafficking. Establishes the Committee on Human Trafficking and provides for its powers and functions as well as establishing centers for the victims of trafficking. A Human Trafficking Fund is also to be created. Domesticates the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime. Human trafficking can be classified as a crime or a violation of human rights.

(f) The Children’s Code Act

The Child Code Act was enacted in 2022 to inter alia, reform and consolidate the law relating to children; provide for parental responsibility, custody, maintenance, guardianship, foster care, adoption, care and protection of children; provide for the grant of legal aid to, and establish procedures for the treatment of, children in conflict with the law; provide for the making of social welfare reports in respect of a child in conflict with the law; establish diversion and alternative correctional programmes and promote the rehabilitation of a child in conflict with the law through programmes to facilitate restorative justice and compliance with laws. The Child Code Act repealed the Legitimacy Act, 1929, the Adoption Act, 1956, the Juveniles Act, 1956 and the Affiliation and Maintenance of Children Act, 1995 and provides for matters connected with, or incidental to, the foregoing.

(g) The Anti-Gender Based Violence Act^{xi}

The Act to provides for the protection of victims of gender-based violence; constitute the Anti-Gender-Based Violence Committee; establish the Anti-Gender-Based Violence Fund; and provide for matters connected with, or incidental to, the foregoing.

(h) The Zambia Police Act^{xii}

This is an Act to provide for the organisation, functions and discipline of the Zambia Police Force and of special constables and for matters incidental thereto.

THE ZAMBIAN CRIMINAL JUSTICE SYSTEM

The first contact a defendant has with the criminal justice system is usually with the police (or *law enforcement*) who investigate the suspected wrongdoing and make an arrest, but if the suspect is dangerous to the whole nation, a national level law enforcement agency is called in. When warranted, law enforcement agencies or police officers are empowered to use force and other forms of legal coercion and means to effect public and social order. The term is most commonly associated with police departments of a state that are authorized to exercise the police power of that state within a defined legal or territorial area of responsibility.

Institutional Framework

(i) The Zambia Police Service

The Zambia Police Service is established under Article 193.^{xiii} Zambia Police is one of the departments under the Ministry of Home Affairs whose main responsibility is to enforce the law against all forms of crime and disorder in order to maintain peace and order throughout Zambia.

(ii) The Courts

The courts serve as the venue where disputes are then settled and justice is administered. With regard to criminal justice, there are a number of critical people in any court setting. These critical people are referred to as the courtroom work group and include both professional and non-professional individuals. These include the judge, prosecutor, and the defense attorney. The judge, or magistrate, is a person, elected or appointed, who is knowledgeable in the law, and whose function is to objectively administer the legal proceedings and offer a final decision to dispose of a case.

(ii) The National Prosecution Authority

The NPA recognizes that all citizens have a right to enjoy a life free from fear and free from crime. As a key partner in the criminal justice system, the National Prosecuting Authority (NPA) plays a critical role in ensuring that those who commit crime are charged and held responsible for their actions. The core work of the NPA is prosecutions. As the lawyers for the people, their focus is to:

- Deliver and serve justice, without fear or favour
- Promote a culture of public responsibility, accountability, and morality
- Ensure public confidence in the criminal justice system
- Contribute to growth of the South African economy
- Contribute to social development

The Human Rights Commission- established in 1997 in accordance with the Paris Principles. It is mandated, inter alia, to investigate human rights violations and maladministration of justice, and propose measures to prevent human rights abuses.

The Judiciary is the primary institution charged with the protection of human rights through enforcing the Bill of Rights entrenched in the National Constitution. Anyone who feels that his or her human rights have been or are about to be violated can seek redress through the High Court which enforces the Bill of Rights.

The National Assembly, which consists of elected and nominated Members of Parliament, carries out a wide range of important public responsibilities that enhance democratic governance in Zambia. These responsibilities include making laws (Acts of Parliament), approving proposals for taxation and public expenditure, and keeping the work of the Government under scrutiny and review.

The Judicial Complaints Authority receives and investigates allegations of misconduct against judicial officers. In their adjudicative duties, officers are expected to conduct themselves with integrity, independence and impartiality in accordance with the Judicial Code of Conduct.

The Police Public Complaints Authority, established in 2002, addresses public complaints against police misconduct in order to protect the rights of citizens. It has been reported that a number of officers found to be violating or abusing human rights have been dismissed from Police Service as a result of the work of the Authority.

The Commission for Investigations – is empowered to investigate complaints of mal-administrative actions by public authorities brought to its attention. It can also recommend corrective action to the affected agencies and obtain redress for a deserving complainant.

The Zambia Correctional Service- The Zambia Correctional Service is governed by chapter 97 of the laws of Zambia (Prisons Act), which was under review in 2016 following the Service's name change from Zambia Prisons Service to Zambia Correctional Service on 5th January 2016. According to article 193 of the Republican Constitution, the Service is mandated to manage all prisons and correctional centers across the country. Offenders are turned over to the correctional authorities, from the court system after the accused has been found guilty. Like all other aspects of criminal justice, the administration of punishment has taken many different forms throughout history. Correction officers supervise convicted offenders when they are in jail, in prison, or in the community on probation or parole. In some communities, corrections officers prepare pre-sentencing reports with extensive background information about the offender to help judges decide sentences. The job of corrections officers is to make sure the facilities that hold offenders are secure and safe. They oversee the day-to-day custody of inmates. They also oversee the release processes for inmates and sometimes notify victims of changes in the offender's status.

VICTIMS OF CRIME AND THEIR IMPORTANCE

A victim is a person who has suffered harm because of an offence committed within the jurisdiction of the court. Victims can either be individuals or organisations. Victims face a number of challenges due to the wrongful conduct of perpetrators. Victims of crime occupy an important position in the criminal justice system. Firstly, they may help in reporting the matter to the police. After that they assist with investigations leading to the commission of the crime; after that they also assist in providing the courts and the police with all the

relevant information needed in prosecuting the crime, from inception up to the point of acquittal or conviction. Furthermore, victims are important to the criminal justice system as they have human rights to be protected under the Zambian Constitution, which provides for the principle of non-discrimination. To understand the importance of victims' role and place, it's imperative to unpack why victims and survivors engage with the legal system in the first place – to know the fate of their loved ones; to narrate their experiences; to speak for the dead, the injured and the disappeared; and to demand justice and accountability. Therefore, the emphasis that is placed on the accused and ensuring the cases are successfully prosecuted, must equally be placed on the welfare of victims after the case is concluded.

It is important to care for victims even after the case is concluded because they can:

- Help with further investigations of crimes which they might have experienced, this is a mechanism of crime prevention;
- Help in disseminating information on the negative effects of crime, in this way raising awareness and just encouraging society to be on the lookout and report any conduct likely to be a crime;
- Assisting in successful prosecution of the case. A case cannot be prosecuted without them, therefore, they can help encourage other victims to break the silence and report cases where necessary;
- Help in alerting the police on new high risk areas of crime;
- Help the police and all stakeholders learn about the new trends in crime commission;
- It can give back the victims confidence that they are still important to society and can still lead a normal life after that;
- It is a way of showing that society does resonate with the victims despite the harmful experiences they might have gone through as a result of the crime;
- Give positive indication of Zambia's coherence to domestic and international instruments on human rights.

INTERNATIONAL LAW AND THE SPECIAL PLACE FOR VICTIMS

On the international silence, for example under International Criminal Law, there is a special place for victims. Recognising the role and interests of victims is one of the most significant strides made by International Criminal Justice in the 21st century. Criminal law has traditionally focused on investigation, prosecution, conviction and punishment of the accused. Into this, victims' perspective was often considered a dilution of traditional criminal law, distraction, complication, molly-coddling, hindrance and an avoidable inconvenience. Victims' rights were spelt out in several instruments of the United Nations. A significant one was the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power – referred to as the Victims' Declaration.^{xiv} This declaration laid down the definition of 'victims of crime' and spelt out their rights, such as access to justice and fair treatment, restitution (including return of property), compensation and assistance (social, legal and medical). In the ICC Statute, victims' rights fall within three main categories: right to protection (from threat, intimidation, coercion and duress), participation (in the proceedings) and reparations (to repair the harm caused). Related rights include right to legal representation, and right to notification and publicity of proceedings which are pre-conditions for an effective participation.^{xv} Relevant Court staff are trained to work with victims and address their specific needs, particularly children, elderly persons, persons with disabilities and victims of sexual or gender violence.

It is clear from the international provisions that, it's time that states around world gave the recognition to victims of crimes as they should be given. This will help improve the efficacy of the criminal justice system.

CHALLENGES OF ZAMBIA'S CRIMINAL JUSTICE SYSTEM

1. The Zambian Criminal Justice System lacks qualified personnel. A number of cases have been lost by state due to lack of well trained personnel. To begin with, the police service training is only six months, this period is not adequate for the police to be properly equipped with knowledge and skills needed to professionally execute their duties, especially knowledge of the law. Police men and women sponsor themselves for further studies.

2. There is a lot of corruption in most of the sectors of the economy. The CJS is not exempt, hence some cases are discontinued not on genuine ground but due to corrupt practices.
3. The National prosecution Authority equally has challenges of well-trained officers in the fields that they deal with. This leaves much to be desired as justice is not done for the victims.
4. There is a high level of human rights violations especially by the police.
5. Some laws are not adequate to address the issue of victims of crime at domestic level.
6. We have very poor enforcement mechanisms in the country, due to shortage of manpower; economic challenges as well as lack of proper infrastructure.
7. Lack of political will on the part of the government to include victims in the criminal justice cycle.
8. There is generally lack of awareness about crime prevention and other issues related to crime in Zambia.

RECOMMENDATIONS

1. It is highly recommended that Zambia amends its laws in order to incorporate the place of the victim.
2. Zambia should ratify and domesticate the laws that protect victims at international law level.
3. Specialised training is needed for all key players in the CJS.
4. The government needs to have political will to increase crime prevention, awareness and punishment by getting more involved and developing policies.
5. The government must establish a fund specifically for victims not only witnesses. The only attempt for funds and shelter for victims under the Anti-Gender Based Violence Act.^{xvi} However this is inadequate to cater for all victims of crime especially those not are not GBV cases.
6. The human rights framework of Zambia to be reformed as this can strengthen protection of victims as it is both a violation of human rights and a crime at the same time.

7. The government to stiffen punishment for officers found wanting in the execution of their duties e.g. involvement in corruption and prematurely closing cases.
8. The government to strengthen corporation with countries that have successfully implemented the protection of victims of crime.
9. Key personnel in the system to be trained in offering counselling and other services for the victims.

CONCLUSION

The CJS is at the core of crime prevention and punishment. It is therefore, imperative that all players of the system are offered adequate protection of the law including victims. Victims are entitled to protection of the law as of right, and this calls for the government and all stakeholders to be intentional for this noble cause as it will enhance the adequacy of the criminal justice system.

ENDNOTES

ⁱ Copyright © 2009-2023 Numbeo

ⁱⁱ 1996

ⁱⁱⁱ Act No.2 of 2016, Articles (1) (2)

^{iv} 11 (a) of the Part III, Constitution of Zambia 1996

^v Article 23, 1996 Constitution

^{vi} Chapter 87 of the Laws of Zambia

^{vii} Chapter 88 of the Laws of Zambia

^{viii} Act No 34 of 2010

^{ix} Ibid, as above

^x No. 11 of 2008

^{xi} 2011

^{xii} Chapter 107 of the Laws of Zambia

^{xiii} Zambian Constitution, Act No. 2 of 2016.

^{xiv} 1985

^{xv} Article 68(3) of the Rome Statute of the International Criminal Justice System

^{xvi} 2011, Sections 27-30