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Abuses committed by African governments for political ends have rightly been the subject of much attention. Many legal systems are not independent from the government. The requirements of due process are ignored, judges and lawyers are silenced through intimidation, harassment or worse. Security agencies and police forces enjoy extensive powers to arrest, detain and torture citizens. Prisons are left in abysmal conditions. This attention is welcome.

But the focus on civil and political rights has concentrated on those who enjoy them – urban elites, in particular well-known lawyers, judges, human rights activists, politicians, journalists, churchmen and members of NGOs who are regarded as critics of the government. The inability of ordinary Africans to obtain justice has been ignored. And yet, as elsewhere in the world, millions of Africans, whose governments are not deliberately penalising them for political reasons, are denied access to justice. Economic realities, social constraints and cultural pressures make it difficult for people to use the existing structures for the administration of justice.

Justice in Zimbabwe examines the ability and willingness of the Government of Zimbabwe, Zimbabwean institutions and individuals to address the needs and aspirations of the people of Zimbabwe with regard to justice, defined broadly. Their record of commitment and achievement is impressive, particularly in light of Zimbabwe's history. But they are struggling against formidable odds – poverty, lack of education, scarcity of legal resources, an elitist legal tradition, cultural pressures, as well as attempts by the Government to undermine the freedom of the judiciary.

Administrative Barriers to Justice

The Government of Zimbabwe has made strides in terms of the substantive content of its law to better conform with international human rights norms. But the administration of justice also depends upon the accessibility of legal representation, an efficient civil service and a judiciary with the resources to be effective. The law by itself cannot adequately respond to the legal needs of people, especially in the rural areas. Financial constraints, illiteracy, unfamiliarity with legal procedure that leads to a lack of confidence, and confusion regarding one's rights all contribute to many people's, especially women's, inability to navigate the bureaucracy of the legal system. There are many serious and committed civil servants who have made significant contributions to simplifying the law and making it more accessible. But many of the civil servants who staff the courts are described as hostile and unhelpful, particularly in their dealings with the poor and with women.

The Judiciary and the Legal Profession

No system of justice is better than the individuals who serve in it. African Rights' report examines the integrity of lawyers, judges and magistrates and details their competence and priorities, as well as the fiscal and political constraints under which they work.

The competence of most members of the judiciary is currently not in doubt, but continued underfunding of the judicial system, compounded by high inflation, may erode the previously high quality of judges. In addition, many qualified and experienced people decline judicial posts because of the comparatively poor conditions of service.

Each year the Government has decreased the justice system's budget. Severe lack of resources undermines the capacity of the judiciary to deliver justice in a timely fashion and saps the morale of judicial officers and staff. The chronic underfunding of the judiciary compromises the efficacy of the judiciary, not only in terms of its ability to attract people of calibre, but in terms of the public's perception. Delays, inefficiency and the poor reasoning in some judgements that results from insufficient time spent with inadequate reference materials engenders a disrespect for the legal system. In a country where for decades the law was perceived as the enemy of the people, many people still do not see justice being done in the courts. Without that legitimacy, the courts are incapable of adequately responding to the various and numerous legal grievances of a significant portion of the population.

The government is not deliberately starving the judiciary of resources. But many Zimbabweans question the priorities of a government that continues to allocate huge resources to the army and security services, despite improved security, while leaving an institution as important as the judiciary at the mercy of foreign funders.

Governmental Interference in the Administration of Justice

Zimbabwe's judiciary has demonstrated an independence that is highly unusual in Africa, by ruling against the State in a number of constitutional and national security cases. Direct political interference with judicial decision-making is rare, if not non-existent. The independence of the Zimbabwean judiciary is most remarkable given the fact that the judiciary was a compliant tool of the government throughout the rule of Ian Smith. In the years immediately following Independence, unpopular judgements stood and the Government made some politically surprising appointments to the bench which helped to foster the judiciary's current international reputation for independence.

In recent years, governmental interference has taken the form not only of constitutional amendments pre-empting and ousting Supreme Court jurisdiction, but at times, of disregard for the legal process. These developments have caused concern and will, in future, put to the test the government's commitment to an independent judiciary.

Cultural, Social and Economic Impediments

No amount of enlightened legislation, judicial reform and training can deliver effective justice, if that justice is not actively sought out by the general populace. African Rights' report analyses some of the deep-rooted impediments found within Zimbabwean society itself. There is a particular focus on the problems of people who live in rural areas, and women.

The Burden of Customary Law

According to recent research undertaken in Zimbabwe, customary law was recorded inaccurately by white Rhodesians. By reducing customary law to a set of rigid and uniform rules and misrepresenting them in the process, the customary law applied in the courts often distorts the custom to such an extent that the result is a denial of justice, particularly for women. This, coupled with the conflict of tradition with new legislation, has created significant confusion at all levels, with devastating effects.

Economic Hardship: A Source of Disenfranchisement

Since 1990, the introduction of a World Bank-supported structural adjustment programme, stagnant wages, high inflation, devaluation of the Zimbabwean dollar, a severe harvest in 1992 and disappointing harvests in 1994 and 1995, have caused widespread economic hardship. Many people have been forced to return to their rural homes, and families have had to make considerable sacrifices. Given this economic reality, a lawyer, not to mention all the other expenses involved in going to court, is wholly beyond the reach of the majority of people.

There are few courts in rural areas where the majority of people live. The Government recently established Magistrates Courts in some rural areas, but the number is far from sufficient. The inadequacy and prohibitive cost of transport is an additional handicap. There are numerous cases in the countryside of default judgements being entered against litigants who tried but failed to appear in court on the designated day because of transport problems.

92% of criminal defendants appear in court without representation. They cannot afford a lawyer. African Rights examines the schemes set up by the government to assist those in need, programmes that are underfunded and often dependent on young lawyers with minimal practical experience.

Ignorance of the Law: A Major Handicap

Illiteracy and a low level of education for a substantial portion of the population means that legal knowledge is largely inaccessible. Legislation, judgements and legal education pamphlets are of little use to a potential claimant or a defendant who

cannot read. The confusion regarding customary law in the courts and the legislature, and among educators and researchers, compounds the ignorance of many people in the rural areas regarding the content of the law. The impressive strides in recent legislation have not been accompanied by sustained, serious efforts at legal education among the rural population, leaving people in the countryside further behind. According to one district administrator, it takes a long time for people in the rural areas to learn of changes in the law:

"For a law to be heard and understood by the people takes years. People here have just heard about some laws that were enacted in the 1970s. Rural people are very disadvantaged. Many of them don't even have a radio, not to mention access to other media forms.

Even if rural people have heard of a law, they may misunderstand it. They may think a new law, like maintenance, applies only to be people in the urban areas. A woman may believe that she can only claim maintenance if she has separated from or divorced her husband. Or, a woman may think that she is barred from claiming child maintenance if she was the one to leave her husband."

Women's Rights: Legislative Progress Against a Background of Economic Powerlessness and Discrimination

The Government has enacted a series of laws to promote the equality of women. This is welcome and the Government deserves credit for its determination to enhance women's rights. But justice requires more than formal fairness in legislation. Most women lack an economic base independent from their husband or their family. The extent to which economic factors hinder women's abilities to exploit the legislation in their favour was expressed by a female lawyer:

"Legal solutions do not always help. We don't have social services, welfare, or battered women's shelters so that a woman will just bear it as long as he is feeding the children. If the government is committed to justice for women, it must go further than the legal system and address economic factors."

Because engaging the legal process requires financial resources, women are particularly vulnerable to injury without the possibility of legal redress.

Even if a woman is knowledgeable about the law, often she is torn culturally in claiming her rights regarding inheritance, maintenance, battery and custody. It may be that in the long run, the extended family system offers more security, both

socially and economically, to a woman than the law. A woman may retreat from the ultimate showdown in the courtroom because it could leave her very vulnerable, without means of support or family upon which to rely. Her decision to forego a legal remedy may merely be a rational choice in view of her circumstances. It may be that the legal process serves some women in Zimbabwe better merely as a threat, rather than as the vehicle for actual redress.

Political Impediments to Justice

In the final analysis, the protection of human rights and the accessibility of justice in a society transcend the machinery of the law. The necessary political ethos draws deeply upon traditions of an engaged and informed public and a vigorous and free press. Neither the judiciary nor the government can genuinely respond to the needs of a silenced society. To be addressed, its aspirations must be heard. In Zimbabwe, the Government has managed to stifle a range of speakers, from the press and broadcast media to opposition parties. *Justice in Zimbabwe* analyses the opportunities for the opposition and the media to play a meaningful role in offering Zimbabweans alternatives and in helping to make the government more transparent and more accountable.

President Robert Mugabe officially abandoned his call for a single-party system shortly after the general elections of 1990, a step that was widely welcomed in Zimbabwe. The lifting of Zimbabwe's 25-year-old State of Emergency in 1990 saw the return of constitutional protection of individual rights. The Government's extensive powers of arrest and detention without charge lapsed. The result has been extremely positive regarding allegations of arrests, detention and ill-treatment of government critics, real and imaginary.

In reality, however, there exists a one-party state in Zimbabwe. ZANU(PF)'s monopoly of parliamentary seats means that the Government has little incentive to fight for its political survival. MPs depend on the machinery of ZANU(PF) to win, rather than by maintaining their popularity with their own constituents, leading to charges that MPs are indifferent to the fate of the people who elected them.

African Rights' report also examines the conduct of the 1995 elections, which in many important respects represented a substantial improvement over the 1990 elections.

Finally, *Justice in Zimbabwe* looks at the continuing human and political legacy of the brutal campaigns in Matabeleland in the early eighties. The families of the disappeared face a variety of legal problems stemming from their inability to obtain a death certificate for the disappeared. They also suffer the added trauma of not knowing what happened to their loved ones. The Government's continuing refusal to publish the results of its investigation allows grievances to fester and fears to abound.

Initiatives by the Government and by Independent Institutions to Promote Access to Justice

One of the most encouraging aspects of the justice system in Zimbabwe is the number of vigorous efforts made by some sections of the Government and by private NGOs to encourage greater access to justice. At Independence in 1980, the new government was committed to reversing the remote and discriminatory tradition of the administration of justice. To a significant extent, it has succeeded. Throughout the report, the frustrations of the rural population are highlighted. But this should not be allowed to obscure the successes and some of the Government's recent efforts, such as the "Women and Law Project" and the establishment of "Victim Friendly Courts."

In addition, a number of vibrant NGOs have supported popular attempts to gain access to justice and to further encourage government reforms. Financial constraints limit the ability of NGOs to be as effective as they would hope, especially in the rural areas where they are most needed. Nevertheless, their work has gone a long way to making access to justice more of a reality for a greater number of people in Zimbabwe.

African Rights hopes that *Justice in Zimbabwe* will stimulate wide public debate in Zimbabwe and contribute towards making access to justice a priority for public policy for the Government and independent institutions. If the quality of this report is anything to go by then these hopes may be justified: it is well-researched and clearly explains the context of human rights achievements and concerns within Zimbabwe. It should prove very useful for all individuals and organisations engaged in the field of human rights and is to be highly recommended.

Reviewed by Nigel Hall, Editor of JSDA, based on African Rights Press Release.