



Policy Brief

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Judicial systems in Sierra Leone, Tanzania and Zambia

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INTRODUCTION

The contemporary judicial systems and cultures in Sierra Leone, Tanzania and Zambia were established during British colonial rule. During this time, the principle of separation of executive, legislative and judicial powers was not observed, as colonial administrative officers frequently exercised both legislative and judicial powers. They made bye-laws and presided over adjudication of cases. As the decolonisation struggle intensified in the British colonies in Africa and political independence became imminent, a feeble attempt was made to establish separate judicial, legislative and executive organs. However, the executive arm of government remained dominant.

Under colonial rule the judiciary and legislature were largely seen as instruments of administration rather than equal and complementary organs of society with distinct functions. In post-colonial African nations this heritage has unfortunately persisted. In spite of elaborate constitutional and institutional architecture involving the separation of executive, legislative and judicial powers, the executive organ persists as the dominant organ of governance, in most cases determining the quantum of resources available to the judiciary and legislature and thereby eroding their powers, independence, performance and integrity.

African countries are signatories to several international and continental legal instruments on the roles and powers of the judiciary in criminal justice administration. Among these instruments are the African Charter on Human and People's Rights; the United Nations Declaration on Human Rights; and the International

Covenant on Civil and Political Rights (ICCPR) of the United Nations. These instruments guarantee a range of rights for citizens suspected or accused of committing a crime or crimes. Fundamentally, they prescribed that accused persons should be presumed innocent until found guilty by competent and impartial tribunals or courts. They also prohibit retroactive legislation; arbitrary arrest and detention, torture and extra-judicial killing; self-incrimination; and double jeopardy. The legal instruments also guarantee prompt arraignment of accused persons before a competent judge; equality before the law; fair and public hearing by a competent, independent and impartial tribunal established by law; adequate time and facilities for the preparation of defence; access to counsel; trial without undue delay; and access to appellate review of judgment of conviction.

These rights have been incorporated into the contemporary constitutions of most African nations. Although all criminal justice agencies and officials are required to observe and respect these provisions, the judiciary is ultimately responsible for ensuring their observance by penalising any organisation or person that breaches them, thereby preventing impunity. However, the judiciary cannot justly, effectively and efficiently interpret the law unless it is independent of control and influence from executive, legislative and other forces and properly equipped with human and material resources.

Judicial independence

An independent, fair and efficient judicial system is necessary for the attainment, consolidation and

sustenance of democratic governance. A democratic (independent, fair and efficient) judicial system is both a product and a guarantor of democratic society. It aids democracy by enhancing and enforcing the rule of law, thereby fostering human rights, justice and the security of citizens from violence, as well as oppression by state and non-state organisations and actors. It also aids economic development by enhancing the enforcement of contractual rights and obligations and thereby promoting economic investments, productivity and opportunities with positive impacts on employment, incomes, poverty reduction and economic induced conflicts and insecurity.

Judicial independence embodies separation of power and the rule of law. Van de Vijver notes that:

At the heart of the establishment and maintenance of judicial independence lie the attitude and approach of the legislature, the executive and civil society. The administration of justice, the courts and the judicial officers, must be taken seriously, and valued for their contributions to good government and the rule of law. The courts must be adequately financed; a competent and efficient administrative infrastructure must be maintained; judges must enjoy decent and secure working conditions (offices, equipment, libraries, etc); judges must be competitively remunerated; orders of court must be complied with promptly and fully by the executive, especially when it (or the legislature) has been found wanting; politicians must be careful not to belittle or demonise the courts for doing a competent job; and so on.¹

These elements are contained in the Basic Principles of the Independence of the Judiciary.²

Essentially, judicial independence requires that a country's judicial system be insulated from external influence, either from governmental sources such as legislative, executive, or administrative authorities, or from private interests attempting to exert economic, social, ethnic, religious or regional pressures on judges.³ The principal goal of judicial independence is to maintain the courts' integrity and credibility within a political system.⁴ Judicial independence has, according to Lagon, two key components: decisional independence, defined as respect for and compliance with the courts' decisions, and structural independence, which means freedom from political leaders' interference in the selection, promotion, compensation, and daily operations of judicial personnel.⁵

JUDICIAL SYSTEMS OF SIERRA LEONE, TANZANIA AND ZAMBIA

Sierra Leone (in West Africa), Tanzania (in East Africa) and Zambia (in Southern Africa) are former British colonies and inherited similar colonial political, economic and legal systems.

Sierra Leone

The estimated population of Sierra Leone is six million people. Freetown, its capital city, was declared a colony by the British in 1808. The remaining parts of the country were brought under British domination as a protectorate in 1896. The country gained its independence in 1961. For a decade (1990–2000) it was engulfed in a civil war. However, the country has witnessed increasing political stability and relatively free electoral process since the end of the civil war in 2000.

Sierra Leone faces serious challenge of weak criminal justice system due to its legacy of political interference and the civil war. The country's criminal justice system lacks adequate personnel with requisite skills as well as facilities to provide effective and fair services. For example, there is still distrust of the police among the population and law enforcement officers are still inadequately trained. Many areas are not served by public police thereby yielding space to different informal policing groups. These challenges, no doubt, negatively impact on the country's judicial system.

There are five types of courts in the country. These are local courts, magistrate's courts, the High Court, the Court of Appeal and the Supreme Court. The country's judicial system was generally efficient until 1964 when political interference began to undermine its independence, impartiality and performance. This trend became progressively worse until 1990, when the civil war started.

The nation's current constitution provided for an independent judiciary headed by the Chief Justice. It also provided that the Chief Justice shall be appointed by the President on the advice of the Judicial and Legal Service Commission and subject to the approval of Parliament. Formally, there is constitutional guarantee of judicial independence in the country. However, gross inadequacies of human and material resources militate against the performance of the judiciary.

The judicial system in Sierra Leone faces several challenges, for example poor conditions of service; shortage of judges due to low wages; lack of modern recording devices for court proceedings; inadequate facilities and

fund for training and retraining; outdated statutes; heavy caseloads; and corruption. Some of these problems are being addressed through post-conflict donor assistance. Ongoing initiatives to strengthen the system include the introduction of new rules of civil procedure; case tracking and reporting system for magistrate's courts; review of legislation; and improving remunerations and conditions of service of magistrates, judges and support staff. The major challenge is the sustainability of these initiatives, especially when donor funding is discontinued.

In order to guarantee judicial independence, impartiality, effectiveness, efficiency and accountability, the following measures are recommended:

- Recruitment of more judges and magistrates
- Improved remuneration and conditions of service for judges, magistrates and judicial support staff
- Use of information and communication technology for the recording of court proceedings, case tracking and preservation of court records
- Alternative non-custodial sentences should be encouraged and appropriately used
- Provision of good library resources for judges and magistrates
- Adequate funding for remuneration and facilities
- Strengthening of the Judicial and Legal Service Commission to enable it carry out effective oversight of judicial officers without interference from the Executive and Legislative arms of government

Tanzania

Tanzania, with a population of 33 million during its last census in 2002, is a unitary republic consisting of two sovereign nations – Tanganyika and Zanzibar. Tanganyika gained independence in 1961, while Zanzibar became independent in 1963. They formed a union on 26 April 1964. Tanzania enjoyed good leadership and governance during the tenure of Julius Nyerere, its first president, who voluntarily relinquished power in 1985. The country's criminal justice system is generally considered to be ineffective due to inadequate personnel with necessary skills, under-funding, poor facilities and corruption.

Tanzania has five types of court, namely primary courts; district courts; resident magistrate's courts; high courts; and the Court of Appeal. Primary courts are lower courts that are primarily responsible for the administration of customary law.

The President, in consultation with the Chief Justice, appoints the judges of the High Court and the Court of

Appeal. Judges of district and resident magistrate's courts are appointed by the Judicial Service Commission while judges of primary courts are appointed by the Judicial Special Service Commission. The mode of appointment of judges, especially to the higher courts, is vulnerable to political interference, ethnic and other considerations that undermine judicial independence, impartiality and integrity.

The Tanzanian judicial system lacks adequate personnel, especially at the level of magistrate's courts and high courts. It also experiences inadequate facilities, including court building; lack of adequate training – including proper induction courses for new appointees and continuing education for serving judges; poor remuneration that induces corruption; excessive delays in trial; and antiquated court rules and procedures. Judges of lower courts administering customary courts are sometimes arbitrary and prejudiced in their decisions.

In order to enhance judicial independence and integrity in the country, the appointment of higher court judges should be subject to wider consultation by the President. He/she should consult with the Bar and the Judicial Service Commission. Candidates should be confirmed by Parliament after diligent consideration of the competence and integrity of the nominee. Further, the following measures should be taken:

- Appointment of more competent judges at all levels
- Appropriate induction courses for newly recruited judges
- Regular refresher courses for serving judges
- Training for judges of lower courts to enable them observe the rule of law and respect fundamental human rights
- Equipping courts with better facilities including appropriate modern technology for recording proceedings, tracking and managing cases
- Provision of better working offices and spaces for both judges and supporting staff
- Higher and competitive remuneration for judges and support staff
- Provision of adequately equipped libraries for judges
- Monitoring and punishing corruption

Zambia

Zambia has an estimated population of almost 12 million.⁶ The country gained its independence on 24 October 1964. There are four types of court in Zambia, namely local courts; subordinate (magistrate's) courts; high courts; and the Supreme Court. The magistrates who preside over the subordinate courts are appointed

by the Judicial Service Commission while the judges of the superior courts (the high and supreme courts) are appointed by the President. However, the appointment of judges of the superior courts is subject to ratification by Parliament. Article 91(2) of the Constitution of Zambia and Judicature Administration Act of 1994 confer substantial independence on the judiciary. There are also accountability and oversight mechanisms for the judges. Their conducts are governed by the provisions of the Judicial Code of Conduct Act, 1999. A Judicial Complaints Authority was also established. Members of the commission are appointed by the President subject to ratification by Parliament. The findings of the commission on misconduct by a judge are forwarded to appropriate authority for action (including the Director of Public Prosecutions) for prosecution, where necessary. Formally, Zambia has adequate statutory provisions to guarantee judicial independence and integrity. In reality, however, political interferences and influences were reported.

The major problems confronting the Zambian judicial systems are:

- Poor funding and inadequate resources, especially at magistrate court level
- Arbitrary judgments at local court level
- Lack of formal training for local court judges
- Trial delays
- Inadequate personnel facilities
- Poor remuneration
- Corruption, especially in lower courts

Some of these problems are receiving attention from the government. Recent initiatives to strengthen the judiciary in the country include building more courtrooms and offices both from budgetary allocation and donor assistance; procurement of electric typewriters; and training of local court judges through collaborative efforts of the judiciary and NGOs.

There has been some reform initiatives in the police force aimed at improving services and access to justice. For example, desk officers responsible for monitoring detention conditions have been appointed; a professional standard unit was created in 2003 to investigate police misconduct; and a Police Complaints Authority was created in 2003 to receive and investigate complaints against police officials by the public. These are the right steps because inadequacies of the police often affect the quality of justice at the successive stages of criminal justice administration. These police reform initiatives, if sustained, will positively impact on judicial efficiency.

Notwithstanding these efforts, there is still a need for:

- Appointment of more judges
- Improved funding and resources, especially at lower court level
- Frequent refresher courses for judges, especially at local and subordinate court level
- Improved case tracking and management to reduce adjournments and delay in trials
- Local courts to be strengthened to enable them comply with human rights standards
- Traditions employed in reaching decisions by local courts should be documented; decisions should also be recorded in order to minimise arbitrariness and divergent decisions from case to case

CONCLUSIONS

A criminal justice system may be efficient without being just, as may happen under conditions of undemocratic rule; an unjust economic system characterised by gross inequality and inequity; political interference in judicial decisions; widespread judicial corruption; antiquated laws and procedures; poor training of judges; inadequate resourcing of courts; and unjust police and prosecutorial decisions and practices. Most African countries have provided constitutional and statutory guarantee for judicial independence. This is an appropriate measure but only the first in many interlinked measures necessary to establishing and sustaining a judicial system capable of promoting and protecting human rights, security and development.

As the discussion of Sierra Leone, Tanzania and Zambia judicial system above shows, the three countries have statutory provisions relating to judicial independence. In reality, however, in all three countries this independence continues to be threatened by the enormous powers wielded by the President. Further, the absence of financial independence coupled with poor funding and low remuneration of judges continues to compromise judicial independence and integrity. Poor remuneration also induces corruption and discourages many competent lawyers with integrity from taking up employment in the judiciary. These inadequacies need to be addressed in order to enhance judicial independence.

A serious dilemma faced by most African countries is the duality of their legal systems – English law and customary law. In some countries, a third legal system in the form of Sharia law has been introduced. The lower courts continue to administer customary laws, but they are often restricted to civil matters. In most

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African countries - including the countries discussed in this brief - customary laws have not been adequately reformed and fail to serve contemporary needs and human rights standards. The governments of Sierra Leone, Tanzania and Zambia (where customary courts are responsible for the administration of customary laws) need to reorganise the courts, modernise their practices, adequately train their judges, properly fund and equip them, and establish effective accountability mechanisms for them.

Some of the problems associated with the judiciary of the countries had their roots in ineffective and inappropriate police and prosecutorial practices. For example, delay in trials and case overload were often the result of police and prosecutorial practices, malpractices and inefficiency, which are compounded by deficits of human resources, competencies and facilities in the judiciary. A highly neglected issue in the institutional architecture and policy relating to the judiciary in Africa is that of oversight and accountability. There is need for a fair and effective framework within the judiciary that will be responsible for monitoring the conduct and functional performance of judges and take appropriate actions such as incentives and discipline.

We conclude by drawing attention to the fact that judicial independence is a means to an end, namely judicial integrity and impartiality, which are critical and necessary

to the observance of the rule of law and protection of human rights.

NOTES

- 1 Linda van de Vijver (ed), *The judicial institutions in Southern Africa: a comparative study of common law jurisdictions*, Cape Town: Democratic Governance and Rights Unit, Faculty of Law, University of Cape Town, 2006, 281.
- 2 Adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of the Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
- 3 Susan Sullivan Lagon, *The role of the independent judiciary*, Freedom Paper 4, 1, <http://usa.usembassy.de/etexts/gov/freed-pap4.htm> (accessed 14 September 2009).
- 4 Ibid.
- 5 Ibid.
- 6 CIA, *The world factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/za.html> (accessed 22 September 2009).

This brief is derived from the country reviews conducted by the AHSI in Zambia, Sierra Leone, Mali, Benin, and Tanzania. See the following ISS monographs: The Criminal Justice system in Zambia, No 159; Sierra Leone: A country review of crime and criminal justice, No 160; Mali: Criminalité et Justice Criminelle, No 162; Benin: Revue de la Justice Criminelle, No 163. The monograph on Tanzania is forthcoming.

