

COUNTRY REPORT - ZIMBABWE

*Davide Jusa**

PART 1: PROTECTION OF VICTIMS OF CRIME AND THE ACTIVE PARTICIPATION OF VICTIMS IN THE CRIMINAL JUSTICE PROCESS IN ZIMBABWE

I. INTRODUCTION

This paper will discuss measures that are in place in Zimbabwe in relation to the protection of victims of crime and the active participation of victims in the criminal justice system and the protection of victims of abuse of power.

The concept of the Victim Friendly Court System in Zimbabwe was a simultaneous development initiated by the Government and women and children's rights activists in the early 1990's.

In 1992, the vulnerable witness committee was set up by the Ministry of Justice, Legal and Parliamentary Affairs. The committee which comprised magistrates, prosecutors, and police officers was tasked to investigate problems faced by vulnerable witnesses in the Criminal Justice System in Zimbabwe.

In 1993 the committee presented the "Vulnerable Witnesses Committee Report" outlining the problems encountered by victims of crime and the suggested recommendations incorporated contributions by most stakeholders with an interest in women and children's rights and related issues.

The findings and recommendations led to the formation of the Victim Friendly Court Committee that oversees the implementation of the protection of victims of crime and their active participation in the criminal justice system: (courts, police, hospitals, schools and the Department of Social Welfare). The foregoing introductory remarks will help examine the current situation, and effective countermeasures under implementation in Zimbabwe.

Zimbabwe accepts the definition of Victims of Crime as outlined in the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power (UN, 1985), defined as:

"Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal laws operative within Member States including those laws prescribing criminal abuse of power."

II. MEASURES TO PROTECT VICTIMS OF CRIME IN ZIMBABWE

Having accepted in principle that victims of crime by and large are women and children because of their vulnerability, that no appropriate and corresponding attention was being given to their rights and interests and also that there was a need to restore the balance between the fundamental rights of suspects and offenders and the rights and interests of victims. This realization led to legislative amendments, the creation of Victim Friendly Courts and the creation of Victim Friendly Units in the Zimbabwe Republic Police.

A. A Compensation System for Victims of Crime

The Criminal Procedure and Evidence Act (Chapter 9:07 Sections 362-365 Inclusive) provides for restitution and compensation where:

- A victim is compensated for loss or damage to property;
- A victim is compensated for personal injury;
- A victim is compensated for innocent purchase of property;
- Restitution for unlawfully obtained property.

* Superintendent Deputy National Coordinator (Victim Friendly Unit), Zimbabwe Republic Police, Zimbabwe.

Section 368 (1) (2) of the Act states that “A court shall not make an award or order in terms of this part unless the injured party or the prosecutor acting on the instructions of the injured party applies for such an award or order. A court shall ensure where appropriate and practicable, that any injured party is acquainted with his right to apply for an award or order in terms of this part”. The police role to inform victims of their rights in terms of this Act becomes imperative and a prerequisite.

B. Protection of Victims and Witnesses from Offenders

Victims in Zimbabwe are protected through the imposition of stringent bail conditions, escort of victims by police, separation of the victim and the creation of a Victim Friendly court system and the adoption of the protocol for multi-sectoral management of child sexual abuse.

Section 319 B of the Criminal Procedure and Evidence Act (Chapter 9:07) according to amendment no. 8 of 1997 states: “if it appears to the court in any criminal proceedings that a person who is giving evidence or will give evidence in the proceedings, is likely:

- (a) to suffer substantial emotional stress from giving evidence: or
- (b) to be intimidated, whether by the accused or any other person or by the nature of the proceedings or by the place where they are being conducted, so as not to be able to give evidence fully and truthfully;

The court may, do any or one of the following:-

- (i) Appoint an intermediary for the person.
- (ii) Direct that the person shall give evidence in a position or place, whether in or out of the accuser's presence, that the court considers will reduce the likelihood of the person suffering stress or being intimidated.
- (iii) Adjourn the proceedings to some other place, where the court considers the person will be less likely to be subjected to stress or intimidation.
- (iv) Subject to section 18 of the Zimbabwe Constitution, make an order in terms of courts and Adjudicating Authorities (Publicity Restriction) Act (Chapter 7:04) excluding all persons or any class of persons from the proceedings while the person is giving evidence.

According to section 121 (1) of the CP and E Act Chapter 9:10 where a Judge or Magistrate has admitted or refused to admit a person to bail the Attorney General or his representative, within seven days of the decision, or the person concerned, at any time may appeal against the admission or refusal or the amount fined as bail or any conditions imposed in connection therewith.

C. Methods of Testimony in Order to Protect Victims and Witnesses

Police responses to victims of sexual attack have been unsatisfactory in many countries the world over, Zimbabwe included. This has been attributed to a variety of societal, psychological and economical factors. Police officers are characterized by a lack of sensitivity towards victims. This attitude by members of the Police causes members of the public to be vindictive, hostile, resentful and uncooperative with them, worse still, such conduct discourages crime victims from reporting cases to the police for fear of secondary victimization.

The Zimbabwe Republic Police (ZRP) through its Victim Friendly Initiatives has managed to overcome such a negative approach through specialized training of Victim Friendly Investigators in counselling skills, techniques for humane and effective interviewing of victims of abuse of power as well as provision of a friendly, conducive and empathetic environment for carrying out interviews and medical examinations of victims.

A Victim Friendly Court was established in order to create a confidential and conducive criminal justice system. The Victim Friendly Court is a special and different closed circuit court designed to allow child

victims to talk freely and comfortably about their ordeals in the hands of the perpetrator. Separate rooms are created for offenders and victims waiting for the trial. During trial proceedings the victim is placed in a separate room from the courtroom with an intermediary or support person. A video camera is placed in the victim's room for the purpose of capturing and relaying the victim's testimony into the courtroom where a TV monitor receives and shows the victims conduct and testimony.

From the moment a victim reports a case to the police until the matter is finalized in court the victim is aided by the state. The statements are recorded by the police at no cost to the victim. Medical examination, treatment and production of medical examination affidavits is done at the state's expense. The victim's transport costs and service of subpoenas and court proceedings are discharged at the state's expense.

D. Various Kinds of Support for Victims

The following are the kinds of support available to victims:

1. Investigation and documentation of the case.
2. Medical examination and treatment.
3. Transport and free litigation costs.
4. Legal aid and advice.
5. Shelter in children's homes and institutions.
6. Counselling, advice and referrals.
7. Restitution and compensation.

III. THE ACTIVE PARTICIPATION OF VICTIMS IN THE CRIMINAL JUSTICE PROCESS

A. The Right of Complaint of the Victim

Victims in Zimbabwe are treated with compassion and respect for their dignity. They are entitled to access the mechanisms of justice and prompt redress without hindrance. Some traditional beliefs and cultural beliefs though act as barriers to the victim's rights of complaint in some cases. It is an offence in Zimbabwe to obstruct or defeat the course of justice by obstructing victims from their right to lodge complaints. No victim with a genuine legal complaint is allowed to be turned away by the police. Cases can only get withdrawn at court if there is insufficient evidence or where accused is acquitted.

B. Private Prosecution

In Zimbabwe, The CP and E Act: Section 16 (1) outlines the powers of public prosecutors as follows: "All Public Prosecutors attached to a Magistrates Court, act, as representatives of the Attorney General and subject to his instructions, charged with the duty of prosecuting in that magistrates court, in the name and on behalf of Zimbabwe all offences which, under any enactment governing magistrates courts or any other enactment, that magistrates courts have jurisdiction to try".

In all other cases where the Attorney General declines to prosecute for an alleged offence, section 17 of the said Act states "Any private party, who can show some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually has suffered by the commission of the offence, may prosecute in any court competent to try the offence, the person alleged to have committed it".

The following also possess this right to Prosecute:

1. A husband, in respect of offences committed against his wife.
2. The legal guardians or curators of minors or mentally disordered or defective persons, in respect of offences committed against their wards.
3. The wife or children or, where there is no wife or child, any of the next of kin of any deceased person, in respect of any offence by which the death of such person is alleged to have been caused.
4. Public bodies and persons on whom, the right is specifically conferred by statute, in respect of particular offences.

C. System/Measures of Objection to Non-prosecution and Dismissal of the Case

The Zimbabwe Republic Police has an open door policy to its victims in the sense that it has a public complaints desk and suggestion boxes for members of the public to lodge their complaints against non-

prosecution of their cases by Police. The Zimbabwe Republic Police in its Service Charter (1996: 7) urges members of the public through encouraging them to help the police by: "making us aware of any dissatisfaction you may have with our service by advising the officer in charge of your police station. If you are still dissatisfied refer the matter to the officer commanding the Police District, then to the officer commanding the Police Province and ultimately to the Commissioner of Police at Police General Headquarters if you are still unhappy". This charter position clearly outlines measures the victims can take against objection to non-prosecution.

Section 15 of the Code states "Neither a conviction nor an acquittal following on any prosecution shall be a bar to a civil action for damages at the instance of any person who may have suffered any injury from the commission of any alleged offence". This section clearly allows victims to pursue compensation and restitution in civil courts where criminal courts fail to provide redress.

D. The Hearing of a Victim's Statement Concerning the Release of an Offender

A person on bail may be arrested without a warrant if a victim provides information on oath or viva voce (by word of mouth) in court that the accused released on bail is about to abscond or is interfering with witnesses, or imposed bail conditions. A magistrate who may upon being satisfied that the ends of justice would otherwise be defeated, commit that person to prison.

E. Recovery of Loss/Damage through the Criminal Justice Process

Section 345 C (1) "A court shall not make an award or order for compensation nor restitution unless the injured party or the prosecutor acting on the instructions of the injured party, applies for such an award or order". In essence victims need to be more aware of such legislative provisions. The ZRP advises victims through awareness campaigns.

According to Section 345C (2) "A court shall ensure where appropriate and practicable, that the injured party is acquainted with his right to apply for an award or order.

F. Providing Information for Victims of Crime

According to the guide for policy makers on the implementation of basic principles of justice for victims of crime and abuse of power:

The responsiveness of Judicial and administrative process to the needs of victims should be facilitated by: "Informing victims of their role, the scope, timing and progress of the proceedings and the disposition of their cases, especially where serious crimes are involved and where they have requested such information".

In Zimbabwe, it is Police standard practice to provide feedback to victims on the progress of their cases and finalization. Every victim is sent through the post an Outcome of Reports Received, that discloses the manner in which victim's cases will have been finalized.

The Zimbabwe Republic Police Guidelines on Handling Victims of Sexual Offences and Aspects of the Investigation manual outlines one of the basic rules of handling victims professionally as that of providing victims with information relating to:

- Case number
- The details of the Investigating Officer
- Information on progress of investigations
- Informing the victim on the proceedings followed by the police, hospitals and the criminal justice system and
- Empowering them with advice on crime prevention.

(2) Providing an opportunity to attend trial

In all criminal proceedings where accused persons admit the charge against them witnesses are not subpoenaed to attend court and testify. Every available opportunity is provided to victims of crime to attend court and testify on the date of trial of an offender who is not admitting to the charge by pleading not guilty.

(3) Providing the community with information concerning the release of an offender

The Criminal Investigation Department Central Criminal Bureau (CCB) prints on a monthly basis Police

Gazettes on wanted persons and recent releases from prison for the benefit of all police officers so that they can disseminate the information to members of the public through community and public relations programmes.

The Zimbabwe Republic Police's Press and Public Relations Section, constantly alerts members of the public with information relating to dangerous, persistent offenders who get released from prison through both print and electronic media.

IV. CONCLUSION

It remains the responsibility of the Zimbabwe Government to develop and support programmes that will respond to the challenges of victimization in society. Victims deserve respect for their privacy, dignity and security. Appropriate competencies and capacities need to be deliberately developed in order to ensure continued protection of victims of crime and their participation in the criminal justice system.

PART 2: CURRENT SITUATION, PROBLEMS AND EFFECTIVE COUNTERMEASURES IN RELATION TO THE PROTECTION OF VICTIMS OF ABUSE OF POWER IN THE CRIMINAL JUSTICE PROCESS

I. INTRODUCTION

The criminal justice process is driven by the victim's desire to seek redress in the form of compensation and restitution. An aggrieved victim may seek recourse in the criminal or civil courts. In this discourse an examination of how victims of abuse of power in the criminal justice process are protected is going to be made. The criminal justice process starts rolling the time a victim makes a report to the police, how police react to the report, the processing of the case, trial proceedings and conclusion of the case. It is imperative that the necessary legal instruments are available to deal with abuse of power in the criminal justice process. Police powers of arrest, detention, search and seizure of property are common cases where abuse of power can be exercised resulting in offenders falling victim to the criminal justice process. Assault on accused persons and torture, wrongful imprisonment and inappropriate sentences are some of the situations where victims need to be protected from abuse of power. The ensuing outline will discuss the current situation, problems and effective countermeasures in relation to protection of victims of abuse of power in the criminal justice system.

In the Declaration "victims" are broadly defined as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are violations of national criminal laws or of internationally recognized norms relating to human rights. This definition is relevant and applicable in this discussion.

Although it is a requirement that victims should be treated with compassion and respect for their dignity and that they are entitled to prompt redress for the harm that they have suffered, through access to the criminal justice system, reparation and services to assist their recovery. In practice, delays, distortions, corruption and incompetence derail all measures put in place to protect victims of abuse of power in the criminal justice process.

II. MEASURES TO PROTECT VICTIMS OF ABUSE OF POWER IN THE CRIMINAL JUSTICE PROCESS

A. Restitution

Offenders in Zimbabwe, where appropriate, pay restitution to victims. The Government on the other hand may make restitution where public officials are at fault. Financial compensation may be made available from the offender or if this is impossible, from the state.

B. Compensation

The Criminal Procedure and Evidence Act (Chapter 9:07) Sections 362-365 provide for restitution and compensation where:

- A victim is compensated for loss or damage to property.

- A victim is compensated for personal injury.
- A victim is compensated for innocent purchase of property.
- Restitution for unlawfully obtained property.

Section 368 (1) and (2) of the Act states that: "A court shall not make an award or order unless the injured party or the prosecutor acting on the instructions of the injured party applies for such an award or order. A court shall ensure where appropriate and practicable, that any injured party apply for an award or order in terms of this part."

Therefore, victims need to be educated on their rights; this is an area that may not receive adequate attention due to resource constraints and lack of funding from the state. Non-governmental organizations, and voluntary organizations, thus play a pivotal role in complimenting government efforts.

Victims of abuse of power are sometimes resented and ignored by state agencies when presenting their cases for prosecution. Rape victims for instance may have no-one believing their story at first instance thereby creating problems in having the case pursued through the criminal justice process. Victims end up losing their right to restitution and compensation when offenders become fugitives and state agencies become reluctant to pursue them.

The fundamental problem in some forms of abuse of power, however, is that when an offence is committed by an agent of the state, the police or justice officials may be unwilling to have the offence reported to them or to act upon it in this instance, the victim is not treated as a victim and will end up not being able to participate in the justice system. This is tantamount to violation of a victim's fundamental constitutional right to protection of the law.

C. Material, Medical, Psychological and Social Assistance and Support

Crime takes an enormous physical, financial and emotional toll on its victims, leaving some dispossessed of their property and others maimed or psychologically affected. In Zimbabwe, all injured victims are medically examined at state expense. Counselling services are carried out by Victim Friendly officers at police stations, by non-governmental organizations in private institutions and in government hospitals. For those dispossessed of their property compensation orders or restitution is granted to them. The Department of Social Welfare provides social assistance and support to victims of crime. The quantum of funding by the state, however, remains inadequate to cover all victims to acceptable levels.

D. Effective Preventive Measures Against Abuse of Power in the Criminal, Justice Process

The United Nations General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR) unanimously in 1966 and Zimbabwe acceded to it on 13 May 1991. It contains legal obligations to be assumed by States as well as measures for implementation.

The United Nations General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984 but it has not been ratified by Zimbabwe. This Convention was designed to prevent and punish torture and other cruel, inhuman and degrading treatment and punishment.

The International Covenant on Economic Social and Cultural Rights was acceded to by Zimbabwe on 13 May 1991. The International Convention on the Elimination of All Forms of Racial Discrimination was acceded to by Zimbabwe in 1991 together with the Convention on the Elimination of All Forms of Discrimination Against Women. These are just but some of the ratified conventions which serve to indicate measures that are being taken in line with United National standards in crime prevention and criminal justice as the conventions were harmonized with domestic laws.

E. Effective Measures for the Establishment of Transparency and Accountability of Criminal Justice Agencies

Many measures are in place aimed at establishing Transparency and accountability such as: The Human Rights Committee (the supervisory body for the International Convention on Civil and Political Rights in its General Comment on Article 6 made the following comments:-

“The right to life is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation”.

In Zimbabwe, this right is protected under Section 12 of the Constitution. Arbitrary deprivation of life includes genocide, war crimes and death arising from torture and ill-treatment.

The measures do not only prevent and punish deprivation of life by criminal act, but also to prevent arbitrary killing by national security forces.

There is also in existence professional codes of conduct and ethics to ensure transparency and accountability. The Anti Corruption Commission is also in existence to ensure among other tasks transparency and accountability of the criminal justice agencies.

F. Various Measures and Systems for Guaranteeing Fundamental Human Rights of Suspects, Defendants and Offenders

An individual's right to freedom of his person is one of the most basic rights which is respected by all societies. Only in unusual circumstances should a person be deprived of his freedom.

Nevertheless, as police officers do their work of catching criminals, it is frequently necessary for them to arrest those they suspect of committing a crime. Careful procedures have been put in place to ensure that police officers do not unnecessarily impinge on people's rights when executing arrests. An arrest involves a very serious interference with the right to liberty of the individual. The status of an arrested person is completely altered as he or she is no longer a free person. Unlawful arrests lead to civil suits.

G. Remedies Available to Aggrieved Persons

Any person who feels they have been wronged by a police officer in the course of an arrest may seek redress in any one of the following ways.

1. Civil action for damages and or return of property or an action for malicious prosecution.
2. Prosecution for assault when injury has been sustained.
3. Where there has been a formal complaint the policeman responsible may incur criminal liability or disciplinary action may be taken against him/her.
4. Self defence by the individual against the actions of the policeman should be permissible in appropriate circumstances.
5. An injured person or his relative/legal representative should be entitled, as of right, to institute a habeas corpus action to have that person produced in court.

III. CONCLUSION

Although the State assumes a dominant role in the justice process, it remains a fact of life that the victim plays a key role throughout the criminal justice process. The victim needs to be given latitude for greater involvement in the proceedings in order to curtail abuse of power in the criminal justice process. The separation of powers between the executive, the legislature and the judiciary will perpetually ensure effective preventive measures against abuse of power in the criminal justice process.