

INTERNATIONAL ASSOCIATION OF LAW SCHOOLS CONFERENCE

**TITLE: THE THREE MOST IMPORTANT THINGS ABOUT MY COUNTRY'S
LEGAL SYSTEM THAT OTHERS SHOULD KNOW**

INTRODUCTION

In this presentation, I will concentrate on the structure of the courts, the Judiciary and the substance of the applicable law in my country. Therefore the major talking points of my presentation are as follows:

The Structure of the Courts

We have in Zimbabwe a dual legal system which to an extent is also reflected in our courts' structure.

At the Apex of the court's hierarchy is the Supreme Court. The Supreme Court applies both general and customary law which laws are responsible for the dual legal system alluded to above. It is a court of first instance only in Constitutional matters but is otherwise for all purposes, a court of appeal. It hears appeals from the High Court, Labour, Administrative courts or any other Court or Tribunal where Statute so provides. No appeal lies from a decision of the Supreme Court and the only relief in such circumstances comes in two limited instances. Firstly in relation to criminal proceedings, the President may be petitioned to exercise his prerogative of mercy and grant pardon. Secondly and in matters that impact on the public, Parliament could move in with an amendment to the law whose effect would be to overturn a court decision. This has often times attracted resounding condemnation as the indiscriminate use of such powers has been known to be motivated by partisan political considerations.

There is no maximum limit on the number of judges that may be appointed to the Supreme Court. Currently the bench consists of eight judges of whom only two

are females. The gender imbalance however, reflects the imbalance that pervades the entire legal profession.

When determining constitutional matters, the court is properly constituted when it has at least 5 judges. In relation to ordinary Appeals, 3 judges are adequate. However, Chamber Applications can be dealt with by only one judge.

The High Court, which is lower than the Supreme Court is a court of inherent/original jurisdiction. It has inherited the common law powers of the Curia Regis of the 5th – 9th Century during the Frankish Empire. In addition to those inherited powers, it has certain powers conferred upon it by statute especially in matrimonial matters. This is the only court that has power to pass the death penalty subject however, to confirmation or reversal by the Supreme Court on appeal. It hears appeals and exercises review powers over Magistrates' Court decisions. It applies both customary and general law.

When hearing matters in the first instance, the court is said to be properly constituted when it has at least a single judge. When exercising its Appellate or Review jurisdiction it will only be properly constituted when it has at least two judges. A judge can sit with two assessors, when hearing a matter in the first instance. In such cases, however, the decision as to matters of law is the judges' prerogative but on matters of fact assessors have a say and the majority view carries the day.

We also have specialised courts in the form of the Labour and Administrative Courts. As their names suggest, the Labour Court deals with labour matters and has exclusive jurisdiction in relation to such matters, and the Administrative Court deals with administrative matters. These courts are both courts of first instance and of Appeal. They only require one presiding officer although it is the norm for presiding officers in the Administrative Court to sit with Assessors. These courts do not apply customary law. They only apply the common law.

For relatively less complex matters was established the Magistrates' Court. This court just like the specialised courts above does not enjoy inherent jurisdiction and its powers are derived from statute that establishes it. In relation to disputes, its jurisdiction is primarily regulated by monetary limits and also its area of operation. This court applies both sets of laws. It sits at times as the Children's Court, Maintenance Court, Small Claims Court and assumes as well an administrative role in the Administration of Deceased Estates.

Finally we have the lower courts which are restricted to the application of customary law. The courts come in the form of the Chiefs and Headman's Courts. These were established primarily for the rural folk who are still keen on pursuing a traditional way of life. There are provisions for their decisions to be taken on appeal or review before the Magistrate's Court.

The Judiciary

Under this heading I will deal with (i) appointments to the bench (ii) the conditions of service and (iii) the independence of the judiciary.

Appointments

Appointments to the bench are done by the President in consultation with the Judicial Services Commission (JSC), a constitutional body. The practice is that when an appointment is to be made, the JSC forwards a list of nominees to the President. If the President proceeds to make an appointment inconsistent with the recommendations, he is then supposed to inform Parliament of that development. It appears Parliament should only hear and cannot act under such circumstances.

Conditions of Service

A serving judge cannot have their salary reduced for any reason. Further, the office of a sitting judge may not be abolished during the continuance of a judge's tenure. Judges have their salaries and allowances paid by Government through the Ministry of Justice.

Independence

Institutional weaknesses abound however, in the manner of appointments and conditions of service that have led many a critic into questioning the reality of the independence of the judiciary. Although on paper the judiciary is supposed to be independent, in reality the bench in the last 7 years or so of the Zimbabwean crisis has become very vulnerable to political manipulation.

Substance of the Law

I will wind up my presentation by making brief comments on the law, that our judiciary applies in the courts discussed above. I will naturally pick on one or two areas of interest.

In Zimbabwe we have a justiciable Bill of Rights. The Bill of Rights however, contains so many exceptions to it with the result that certain repugnant laws are saved. One is reminded of the Death Penalty, discrimination in marriage laws and repressive political legislation.

The Constitution specifically recognises the legality of the death penalty which has been retained to punish murder and treason. Though our courts deal with a lot of murder cases, it has generally been felt that its use in treason cases has been aimed at, and has in fact quashed political dissent.

As alluded to earlier on, we have a dual legal system. This system consists of general law embracing the Roman-Dutch common law and statute on one hand and customary law on the other. Though customary laws were originally applicable to Africans, by virtue of the current choice of law rules they now occasionally apply to non Africans. This duality has led to many problems as the application of different laws have led to different results thus leading to the unenviable position of differences in the dispensation of justice to people of the same country confronted by similar facts. This is apparent in the marriage institution where we have on one hand civil-monogamous marriages and customary-polygamous marriages which have different proprietary consequences at Divorce and at Death and different personal consequences.

Quite predictably however, this duality has not affected all areas. Customary law has reared its head usually in areas of personal laws whereas general law applies in all other respects. The perpetuation of this duality has attracted immense debate and sometimes hostile criticism.

Conclusion

In conclusion, it is my fervent hope that the above discussion sheds some light on the Zimbabwean Legal System. Right now Zimbabwe is enmeshed in a deep political and economic crisis which has negatively impacted on the country's legal system in terms of its efficiency, independence and credibility.

I thank you all!!