



Policy Brief

Head Office
Block D, Brooklyn Court,
Veale Street, New Muckleneuk,
Pretoria 0181,
South Africa
Tel +27 12 346 9500
Fax +27 12 346 9570
E-mail iss@issafrica.org
www.issafrica.org

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Policy Brief Nr 14, October 2009

Prosecution in Sierra Leone, Tanzania and Zambia

Etannibi E O Alemika
addisababa@issafrica.org

INTRODUCTION

Prosecutors are primarily responsible for preparing charges and arraigning accused persons before competent courts or tribunals for trial. The primary duty of the prosecutor 'is to seek justice as well as to convict those who are guilty'¹. In an ideal sense, he or she 'focuses the power of the state on those who disobey the law by charging a person with crime, releasing the individual from prosecution, or eventually bring[ing] the accused to trial'². Thus, a prosecutor investigates violations of the law in cooperation with the police; determines appropriate charges for criminal infractions and presents evidence before judges to enable them to determine the culpability of accused persons.³ Prosecutors are expected to 'protect the innocent by revealing any shred of evidence that would exculpate an accused person, as well as persevere in the prosecution of those persons who are factually and legally guilty of a crime'⁴. Overall, prosecutors exercise enormous influence within the criminal justice system because their power to initiate, sustain or discontinue charges has serious implications for the liberty of crime suspects.

PROSECUTORIAL INDEPENDENCE AND DISCRETION

Like the judiciary, the prosecution authority and officials must enjoy professional independence. They should not be subject to the undue influence of the executive, legislative or judicial branches of government. In order to build and sustain public confidence, the prosecution should be fair, transparent, and efficient, and accountable (for cost, decisions and conduct) to appropriate democratic

institutions. However, a prosecution agency requires adequate independence, especially in relation to the appointment of personnel, security of tenure, merit-based career progression as well as protection from interference in its decisions relating to prosecution.

Prosecutors 'exercise a variety of discretionary options over an individual's freedom, life, property, reputation, and well-being which are unmatched in power by any other official in the criminal justice system'⁵. Yet, in spite of the enormous powers of the prosecutor, and 'the inherent possibilities of injustice, prosecutorial mischief, or corruption, and the employment of the criminal process as a vehicle of harassment, prosecution bureaucracies are virtually autonomous in the conduct of their business in profound secrecy'.⁶

All suspects cannot be prosecuted: some crimes are too minor making prosecution a possible waste of resources. Some laws may indeed run counter to community values and the prosecution of their violation may engender lack of respect for law. Even in some serious cases, public interest in reconciliation and political stability may dictate the non-prosecution of offenders. As a result of such factors, prosecutors exercise prosecutorial discretion. Hence, the prosecutorial function and discretion revolves around the following primary issues and decisions:⁷

- Screening, reviewing and evaluating police reports of arrest and investigation to determine the quantity and quality of evidence and their value in securing conviction
- Deciding which cases to charge and which to screen out of the criminal process

- Conducting a trial before a judge or jury or a tribunal
- Deciding to drop or request the dismissal of charges which have been entered (*nolle prosequi*).

The role of the prosecutor is complex and seemingly contradictory. He or she is to pursue the conviction of the guilty with all resources within his or her power, while at the same time being obliged to protect the innocent from being convicted. The major factors that influence the professional decisions of prosecutors are the following:

- Prosecutor's reasonable doubt that the accused is in fact guilty
- Extent of harm or loss caused by the offence
- Prevalence of the offence in the jurisdiction
- Mood of the public regarding the need to accord priority to the prosecution of the offence
- Authorised punishment in relation to the particular offence or the offender
- Quality of evidence obtained at the crime scene, through investigation and from credible witnesses
- Possible improper motives of a complainant
- Reluctance or cooperation of the victim to testify
- Cooperation of the accused in the apprehension or conviction of others
- Likelihood of prosecution of the accused by another jurisdiction
- Public interest

PROSECUTION IN ANGLOPHONE AFRICAN COUNTRIES

In most anglophone African countries criminal justice administration is by adversarial process. Prosecution is undertaken by the police and state counsels. The state counsels are lawyers employed by the government. They usually serve in the ministry of justice in the public prosecution unit or division. The police are also vested with prosecution powers, subject to the powers and directions of the attorney general or director of public prosecution. They prosecute a very large proportion of the cases in lower and magistrate's courts where the majority of crimes are tried. Furthermore, specialised state policing organisations also employ lawyers who are responsible for the prosecution of their cases. Like the police, their prosecutorial powers are subject to the powers and directions of the either the attorney general or director of public prosecution who is often vested with power by the constitution of the countries to initiate, take over or discontinue prosecution in any court at any stage before judgement.

Many African prosecution authorities do not enjoy the required independence, especially in terms of prosecutorial decisions. This is attributable in part to the practice in many countries of combining the office of the attorney general and minister or commissioner of justice. Although, the attorney general is meant to serve as the chief law officer of a country or of a state, the minister or commissioner of justice is often appointed on the basis of partisan political consideration or affiliation. Thus, there is a conflict of interest between the professional responsibility of an attorney general as a law officer and the partisan political considerations of a minister or commissioner of government as the primary legal adviser to the government in power. Arising from this conflict is the concern that prosecution is sometimes employed as a tool for persecuting and neutralising political opponents. Conversely, supporters of ruling parties who commit heinous crimes may be shielded from prosecution.

The office of the director of public prosecution is often located within the ministry of justice and subject to the direction of the attorney general and the minister or commissioner of justice. In many African countries, even though the directors of public prosecution are career public officials who have progressed into the office from lower ranks, their appointment can be terminated by a government that wishes to do so. Obstacles impeding the operational effectiveness of prosecutors in many African countries include underfunding, inadequate personnel, lack of opportunities for relevant training, delays in police investigations, and incompetent and compromised investigations.

PROSECUTION IN SIERRA LEONE, TANZANIA AND ZAMBIA

Sierra Leone, Tanzania and Zambia are former British colonies. They inherited similar political, economic and legal systems from British colonial rule. Sierra Leone is in West Africa; Tanzania in East Africa, while Zambia is in Southern Africa.

Sierra Leone

The estimated population of Sierra Leone is six million people. It was the first colonial outpost in West Africa. 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 independence in 1961. For a decade, 1991–2000, Sierra Leone was engulfed in a civil war. However, the country has subsequently witnessed

increasing political stability and a relatively free electoral process since the end of the civil war in 2000. There are five types of court in the country: the local courts, magistrate's courts, the High Court, the Court of Appeal and the Supreme Court.

Prosecution is undertaken in the country by the police and state counsels. Police prosecutors attached to office of the director of public prosecution (DPP) often prosecute cases in the lower courts where the majority of criminal cases are tried and determined. The DPP office is located within the ministry of justice. In Sierra Leone the offices of the minister of justice and the attorney general are held by a single person, who is a political appointee. He or she is appointed by the president of the country at whose pleasure the official retains the dual offices. There is also an office of a solicitor general. This is a public officer appointed by the president on the advice of the Judicial and Legal Service Commission.

Constraints of prosecution in Sierra Leone

The solicitor general and the DPP are subject to the direction of the minister of justice and the attorney general. This is a source of political control that interferes with the independence of the prosecutors because the minister of justice and attorney general is appointed on partisan political consideration. He or she will usually be a member of the ruling political party and is a very important member of the Cabinet. Furthermore, the prosecution system is plagued by several problems, including:

- Personnel in the DPP's office are inadequate to enable effective prosecution.
- Police attached to the DPP's office do not have adequate legal training to implement effective prosecution.
- Delays in prosecution are engendered by delays and lack of capacity in criminal investigation by the police.
- Requests for adjournments by prosecutors, defence and at the instance of court result in delays in trials and prison congestion.
- Resources for the retraining of prosecutors are inadequate.
- Funding and resources for prosecution are inadequate.

Recommendations

It is recommended that the capacity and effectiveness of prosecution in Sierra Leone be enhanced through the following measures:

- Separation of the office of the attorney general from that of the minister of justice in order to enhance the professional independence of the prosecution authority
- Increase in the personnel and resources available for prosecution by the police and DPP office
- Provision of appropriate training and retraining of prosecutors, both police and state counsels
- Enhancement of the capability of police in criminal investigation for purposes of reducing delay in trials and gathering of credible evidence

Tanzania

Tanzania, a country with a population of 33 million, according to the 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. Both 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. Tanzania has five types of court, namely primary courts; district courts; resident magistrate's courts; the High Court and the Court of Appeal. The primary courts are lower courts that are primarily responsible for the administration of customary law.

Under the constitution of Tanzania, the director of prosecution has the power to institute, take over or discontinue a criminal trial. State attorneys and public prosecutors are employed in the ministry of justice. However, the Tanzanian police are empowered to arraign and prosecute certain categories of offenders in lower courts. State attorneys usually prosecute serious cases in higher courts.

In order to give effect to the constitutional right to liberty, the law specifies that offenders should not be detained for longer than 60 days. However, the law also provides for three extensions of a detention order, bringing the total period of detention allowable by law to 240 days. The police and prosecutors have often circumscribed this provision by releasing or arraigning suspects before 60 days, only to rearrest the same so that the 60 days' limit starts afresh.

Constraints of prosecution in Tanzania

Prosecutors in Tanzania encounter several problems. The major ones include inadequate personnel, underfunding, dearth of facilities for the training of prosecutors and lack of appropriate resources and facilities,

especially information and communications technology (ICT) and up-to-date library resources. The performance of prosecutors in the country is also affected by delays in criminal investigation by the police resulting in delays in prosecution and sometimes incompetent prosecution.

Recommendations

Prosecution in Tanzania can be enhanced by providing more prosecutors. Adequate facilities for training as well as sufficient funding for various services and aids required for prosecution should also be provided. In addition, adequate resources should be provided for the procurement and maintenance of ICT facilities that aid case tracking and management. Updated library resources – books, journals and law reports – should be provided. Finally, the investigative capacity of the police should be enhanced so that delays in prosecution associated with delays in investigation can be drastically reduced.

Zambia

Zambia has an estimated population of 13 million people. The country gained its independence on 24 October 1964. There are four types of court in Zambia: local courts; subordinate (magistrate's) courts; the High Court and the Supreme Court.

The Zambian director of public prosecution (DPP) is appointed by the president. However, the appointment is subject to ratification by the parliament. Prosecution is undertaken by state counsels and the police. The DPP is vested with powers of initiating, taking over and discontinuing prosecution.

Constraints of prosecution in Zambia

The data gathered in the course of the research survey for this brief showed several inadequacies and constraints regarding prosecution in this country. These include:

- Prosecutors attached to the DPP's office are subject to insecurity of tenure and poor conditions of service.
- There is a lack of adequate personnel in the DPP office.
- Generally the public perceives the DPP as being ineffective in prosecuting cases involving influential persons.
- Absence of direct funding by parliament of the DPP office makes it vulnerable to executive interference.
- Fragmentation of prosecutors in different institutions inhibits coordinated prosecution policy and direction.
- Trials are delayed.

- Prosecution is ineffective.
- Poor crime investigation capacity and lack of forensic facilities engender delays in trials and incompetent prosecution.

Recommendations

Prosecution in Zambia can be significantly improved if the following measures are undertaken:

- Enhanced security of tenure for the prosecutors attached to the DPP office
- Adequate and direct funding by the parliament
- Coordination of prosecution by the DPP office for coherence
- Implementation of the National Prosecution Policy drafted in 2000
- Recruiting and proper training of adequate personnel
- Development of police investigative capacity, competence and facilities in order to enhance the quality of evidence obtained during investigation as well as minimise delays in trials.

CONCLUSION

Prosecution services in Sierra Leone, Tanzania and Zambia face similar problems, which include inadequate professional autonomy; lack of capacity owing to inadequate personnel and funding; and delays in prosecution, partly on account of the poor crime investigation capacity by the police. Effective solutions to these problems are therefore required to establish efficient, transparent and trustworthy prosecution services in these countries.

NOTES

- 1 J J Senna and L J Siegel, *Introduction to criminal justice*, 2nd ed, New York: West Publishing Co, 1981, 296.
- 2 Senna and Siegel, *Introduction to criminal justice*, 296.
- 3 Senna and Siegel, *Introduction to criminal justice*, 298.
- 4 A S Blumberg, *Criminal justice: Issues and ironies*, 2nd ed, New York: New Viewpoints, 1979, 122.
- 5 Blumberg, *Criminal justice: Issues and ironies*, 123.
- 6 Blumberg, *Criminal justice: Issues and ironies*, 123.
- 7 Blumberg, *Criminal justice: Issues and ironies*, 123.

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

Addis Ababa Office
First Floor, Ki-ab Building,
Alexander Pushkin Street,
Pushkin Square Addis Ababa,
Ethiopia
Tel +251 11 372 1154/5/6
Fax +251 11 372 59 54
E-mail addisababa@issafrica.org

Cape Town Office
67 Roeland Square,
Drury Lane Gardens,
Cape Town 8001,
South Africa
Tel +27 21 461 7211
Fax +27 21 461 7213
E-mail capetown@issafrica.org

Nairobi Office
5th Floor, Landmark Plaza,
Argwings Kodhek Road,
Nairobi,
Kenya
Tel +254 20 300 5726/8
Fax +254 20 271 2902
E-mail nairobi@issafrica.org

Pretoria Office
Block C, Brooklyn Court,
Veale Street, New Muckleneuk,
Pretoria 0181,
South Africa
Tel +27 12 346 9500
Fax +27 12 460 0997/8
E-mail pretoria@issafrica.org

Criminelle, No 162; Benin: Revue de la Justice Criminelle, No 163. The monograph on Tanzania is forthcoming.

