

Zimbabwe: Mnangagwa's capture of judiciary a red flag for state failure

The Africa Report By Michelle Chifamba

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Judges are seen during the inauguration ceremony of Zimbabwean President Emmerson Mnangagwa, in Harare, Sunday, Aug. 26, 2018. (AP Photo/Tsvangirayi Mukwazhi)

Zimbabwe celebrated on 17 November [2020] the third year since former president Robert Mugabe was overthrown and replaced by Emmerson Mnangagwa. People assumed that the change in power - after being controlled by Mugabe for 38 years - would open a new positive chapter for Zimbabweans. But instead, cases of human rights violations, arrests and detainment of civic rights activists, corruption, economic demise, crumbling infrastructure and unemployment are once again making headlines.

In Harare, citizens bemoan the demise of Mugabe's rule, stating that things have worsened under the new government. For many, the situation in the country has actually worsened since Mnangagwa took over.

Just last month, judges in Zimbabwe wrote a letter to the president and the Zimbabwe Anti-Corruption Commission, outlining judicial capture as the major challenge affecting the Judiciary.

The letter, dated 26 October 2020 claims the Judiciary was under siege, **with judges being captured** thereby unable to independently execute their duties without interference from the executive and state agencies.

'Traces of judicial capture and lack of independence'

Section 164 of the Zimbabwe constitution **calls for the independence of the judiciary**, stating that the courts are independent and subjected to the constitution and the law.

“The independence and effectiveness of the courts are central to the rule of law and governance,” reads Section 164 (2), of the Zimbabwe constitution.

Judges have accused the Chief Justice, Luke Malaba, of overseeing court judgements, many of which are operating out of fear of going against the government line rather than being objective. Justice Minister Ziyambi Ziyambi also told legislatures in Parliament that the courts were not captured.

Ziyambi said: **“As far as I am concerned, the judiciary is so much independent** to do whatever they want and I cannot interfere with their work myself.”

Speaking to *The Africa Report* on the condition of anonymity, one Harare-based retired prosecutor and legal expert, says the issues that were raised in the letter by the judges should not be swept under the carpet.

“The matters that were raised in the letter warrants further investigation,” says the former-prosecutor.

There is selective application of the law and the magistrates are severely compromised by state interference.

He adds: **“Traces of judicial capture and lack of independence** thereof are there in Zimbabwe’s judiciary system though it is difficult to find magistrates who are willing to speak on the record.”

‘Threat to the independence of the judiciary’

In July this year, following an intervention from the Africa Judges and Jurist Forum (AJIF) – a Pan-African network of judges and jurists committed to promoting justice and development in Africa – **Chief Justice Malaba reversed a controversial directive** that judges should first seek approval or have their judgements seen by their superiors before they are handed down. The order was described by the legal group as unconstitutional and a threat to the independence of the judiciary.

“Without reasonable doubt, Zimbabwe’s courts are captured. The conduct of the magistrates especially at the anti-corruption courts reveal that the judges and magistrates are following a script of orders,” says the former prosecutor.

“Most of their judgements are handled in a manner that is dubious. **Hopewell Chin’ono, a journalist was remanded in prison for more than 40** days without bail for exposing corruption. The minister of health, who was accused of corruption was not charged nor remanded in prison. There is selective application of the law and the magistrates are severely compromised by state interference,” he adds.

“Instead of being protected by the state, whistle-blowers are being prosecuted, while perpetrators are going unpunished,” he says.

Political leader, and organiser of the 31 July anti-government protests against corruption and the country’s growing economic crisis, **Jacob Ngarivhume was arrested** and charged with inciting the public to commit violence. Ngarivhume spent 45 days in prison while being denied bail four times.

“The case of Chin’ono and Ngarivhume were clear reflections of judicial bias. Their charges did not warrant for them to come to court in leg irons and handcuffs, let alone to be transferred to Chikurubi maximum prison.”

“Joana Mamombe, a legislature in Zimbabwe’s Parliament and her co-accused persons, against that of Minister of Labor Prisca Mupfumira also shows how the judiciary is captured. While Mupfumira was being accused of corruption, her case was dismissed for health conditions. Mamombe was detained and prosecuted despite her health,” adds the former prosecutor.

The only people who get bail at the magistrate’s courts are those aligned to the president and ruling party.

“I have absolutely no doubt that there is judicial capture at the magistrate’s courts because I have seen it. One only qualifies for bail when the state concedes,” Human Rights lawyer, Beatrice Mthetwa tells *The Africa Report*.

Section 165 (4) of the Zimbabwe constitution, states that **members of the judiciary must not engage in any political activities**, hold office in or be members of any political organisation. “The anti-corruption courts at Rotten Row in Harare, there can be no question that there is total capture in those courts. The only people who get bail at the magistrate’s courts are those aligned to the president and ruling party.”

A Harare Magistrate is under disciplinary measures from the Judicial Service Commission after he revealed interests in standing for election in the ruling party’s Zanu PF District Coordinating Committee in Mt Darwin.

“A clear sign of judicial capture is evidenced when a sitting magistrate reveals plans to campaign for a political position, in clear defiance of the supreme law of the land, the constitution,” adds the former prosecutor.

Zimbabwe’s constitutional legacy

Douglass Mwonzora, a lawyer and senator of the opposition Movement for Democratic Change says while the authenticity of the judges’ letter is questionable, the issues of judicial capture ought to be investigated because **they have affected the country since post-independence**.

“That letter was unanimous and therefore it is difficult to tell its authenticity. I doubt that the judges will write in that manner if they wanted the issues to be addressed so the letter is difficult to rely on.”

“However, the independence of the judiciary is an important aspect of democracy and democratic governance and we need to safeguard the independence of the judiciary,” Mwonzora tells *The Africa Report*.

In January 2020, the Zimbabwe government published in the official gazette a Constitution of Zimbabwe Amendment Bill (No.2), that proposed to amend 30 sections of the constitution.

Among the changes proposed included one giving the president powers in the appointment and extension of tenure of superior judges of in a non-transparent way.

Mnangagwa has since had to make recommendations of candidates for the Constitutional Court judges.

The opposition is mandated to stop the amendments of the constitution through parliament to prevent the judiciary from being manipulated by the Executive, explains Mwonzora.

Mwonzora adds: “The appointment of judges must be as provided in the constitution, after extensive public interviews. The government is trying to change that and appoint judges without public interviews, this brings favouritism, and some judges will not be there on merit and become susceptible to manipulation.”

Mnangagwa administration challenges:

Democratic spaces are shrinking under Mnangagwa, says lawyer Beatrice Mthethwa. “It has become worse because **things are being done clumsily**, it has become obvious that the bias in the judiciary is targeting political opponents more than criminals.”

But Human rights advocate Abigail Mupambi says **things are still better under** the Mnangagwa administration.

“Unlike the Mugabe regime, the new dispensation has given people room to open up. People are free, the judges have written the letter to outline their challenges, this was unheard of during the Mugabe regime,” Mupambi tells *The Africa Report*.

“The space has been opened up to the advantages of activists. **The fact that people can actually write and talk about freely** is an advantage for us to seek ways to address the challenges,” she adds.

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