



Assessing the Impact of Legal Representation on Criminal Sentencing Outcomes for Unrepresented Accused Persons: A Case Study of Bulawayo Metro-Politan Province, Zimbabwe.

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ABSTRACT

Access to legal representation is a fundamental right to ensure a fair trial. In many developing countries, unrepresented accused persons or defendants still struggle to obtain skilled legal assistance. This study investigates on how legal representation affects criminal sentencing outcomes of accused persons without lawyers, mainly focusing on Zimbabwe's criminal justice system. Through a descriptive quantitative approach, 80 participants were surveyed who included magistrates, legal aid practitioners, criminal defense attorneys and former accused persons. Data from structured questionnaires were analyzed with SPSS. Results show a statistically significant link between the presence and quality of legal counsel and sentencing: unrepresented accused persons were more likely to receive custodial sentences, longer prison terms and face fewer acquittals.

Keywords: Legal representation, unrepresented accused persons, sentencing outcomes, legal aid, criminal justice in Zimbabwe

INTRODUCTION

Background and Context

The right to legal representation is widely regarded as an essential component of the right to a fair trial and due process. It is not merely a procedural formality but a substantive safeguard that ensures that accused persons effectively understand and challenge cases against them. This right is enshrined in several key international human rights instruments. Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) explicitly states that, everyone charged with a criminal offence is entitled “to defend himself in person or through legal assistance of his own choosing” and, where the interests of justice require, to have legal assistance assigned without payment, if they lack sufficient means. Similarly, Article 7(1)(c) of the African Charter on Human and Peoples' Rights provides for the right to be defended by counsel of one's choice. These provisions reflect a global consensus, that competent legal counsel is critical to balancing the power disparity between the State and an individual in any criminal proceedings.

Despite this universal recognition, a persistent gap exists between the legal ideal and the practical reality for many accused persons, particularly those who cannot afford private legal representation. In theory, the law guarantees equal access to justice and in practice, economic status often determines whether an accused person receives meaningful defense or faces the criminal justice system alone. The consequences of this gap are significant, as lack of legal representation directly affects an accused person's ability to secure bail, understand charges, present evidence, cross-examine witnesses and make informed plea decisions.

In Zimbabwe, as in many other developing nations, the criminal justice system operates under considerable strain. Resource constraints generally limit the capacity of courts to process cases efficiently, leading to prolonged pre-trial detention and backlog on dockets. The judiciary is overburdened with magistrates and judges

handling cases that exceed manageable levels and this reduces time available for each case to be fairly heard and increases reliance on procedural shortcuts.

The state-funded legal aid system, administered through the Legal Aid Directorate under the Legal Aid Act [Chapter 7:16] is intended to bridge this access gap. However, it falls far short of meeting its demand. The Directorate is severely under-resourced working with less than 40 legal aid practitioners serving a population of over 15 million people as of 2020. This translates to unsustainable case-loads that make thorough case preparation and individualized client attention structurally impossible. Coverage is also uneven, with services concentrated mainly in urban centers such as Harare and Bulawayo while in rural areas, it remains largely underserved. For the majority of Zimbabwe's population, which is rural, this means that the access to legal aid is more theoretical than practical.

As a result, a large proportion of accused persons normally go through complex criminal proceedings without qualified legal assistance or representation. Criminal trials involve intricate procedural rules, evidentiary requirements and legal terminology that are difficult for lay-men to understand. Unrepresented accused persons often plead guilty without fully appreciating the consequences, or fail to apply for bail and or miss opportunities to present factual mitigatory factors at sentencing. This does not only undermines the fairness of individual cases but also contributes to broader issues such as overcrowded prisons and reduced public confidence in the justice system. The situation creates a *de facto* two-tier system where the quality of legal defense and extension of the sentencing outcome is largely determined by an accused person's ability to pay for private counsel. This undermines the constitutional guarantee of equality before the law and the principle that justice should not be contingent on wealth.

Statement Of the Problem

Equality before the law is compromised when access to legal representation depends on an individual's financial resources. In Zimbabwe's Magistrates Courts, which handles much of the bulk of criminal cases, many of the accused persons appear without legal counsel because they cannot afford legal fees. The Legal Aid Directorate, which is meant to provide free legal services to eligible individuals, is persistently underfunded and understaffed. As a result, a substantial number of unrepresented accused persons do not receive adequate legal support.

This situation casts doubt on the fairness and legitimacy of criminal justice system. While anecdotal evidence and initial findings suggest that unrepresented defendants tend to receive harsher sentences, lower acquittal rates and more likely to plead guilty even when a valid defense exist. There is a lack of systematic empirical data on this issue in Zimbabwe. This data gap has hindered efforts by lawmakers and legal practitioners to push for substantive reform. The present study seeks to fill that gap by offering evidence-based analysis of the relationship between legal representation and sentencing outcomes.

Research Objectives

The study is guided by the following objectives:-

- ❖ To examine the relationship between the presence or absence of legal representation and criminal sentencing outcomes for indigent accused persons in Zimbabwe.
- ❖ To assess the accessibility and adequacy of legal aid services available to indigent accused persons in the Zimbabwean criminal justice system.
- ❖ To evaluate the perceptions of legal practitioners and judicial officers regarding the influence of legal representation on sentencing decisions.
- ❖ To recommend measures that can be adopted to ensure equitable access to legal representation for indigent accused persons.

Research Questions

The study seeks to answer the following research questions:

- ❖ Does the quality and availability of legal representation significantly influence criminal sentencing outcomes for indigent accused persons?
- ❖ What structural and systemic barriers prevent indigent accused persons from accessing adequate legal representation in Zimbabwe?
- ❖ How do magistrates, legal aid practitioners and defense lawyers perceive the effect of legal representation on sentencing decisions?
- ❖ What reforms are necessary to ensure meaningful access to legal representation for all accused persons regardless of economic status?

LITERATURE REVIEW

The Right to Legal Representation in International Law

The right to legal representation is deeply embedded in international human rights law. Article 14(3)(d) of the ICCPR provides that every accused person has the right 'to be tried in his presence and to defend himself in person or through legal assistance of his own choosing.' This provision further guarantees the right to free legal assistance when the interests of justice so require and if the accused cannot afford to pay. The United Nations Basic Principles on the Role of Lawyers (1990) further strengthen this by obligating governments to ensure that 'all persons are immediately informed by the proficient authority of their right to be assisted by a lawyer of their own choice upon arrest or detention' (United Nations, 1990).

At the regional level, the African Charter on Human and Peoples' Rights, ratified by Zimbabwe, enshrines the right to defense, including the right to be assisted by counsel of one's choice (African Union, 1981). Zimbabwe's Constitution under section 70(1)(d) of the Constitution of Zimbabwe Amendment (No. 20) Act of 2013 guarantees every accused person the right 'to choose and be represented by a legal practitioner and to be informed of this right promptly.' These provisions, read together, create a robust legal framework demanding effective access to legal representation.

Legal Representation and Sentencing Outcomes: Empirical Evidence

A substantial body of pragmatic research demonstrates a significant correlation between legal representation and sentencing outcomes. **Roach** (2011) in a study of Canadian criminal courts found out that accused persons being represented by private counsel had a 20% higher rate of acquittal compared to those represented by public defenders and a significantly lower rate of custodial sentencing. Similarly, **Williams and Redlich** (2016) in a United States study found out that defendants who appeared unrepresented at sentencing hearings were three times more likely to receive maximum sentences.

In the African context, **Mwenye** (2014) conducted a systematic study of sentencing patterns in Zambia and found out that unrepresented accused persons received custodial sentences at a rate of 35% higher than those represented accused persons convicted of comparable offences. **Kariuki** (2018) reached similar conclusions in Kenya where he noted that the quality of legal representation, not merely its presence was a significant determinant of sentencing outcome. Where accused persons are represented by experienced counsel, they fare considerably better than those represented by legal aid lawyers with high caseloads and limited resources.

The Legal Aid System in Zimbabwe

Zimbabwe's Legal Aid Act [Chapter 7:16] establishes the Legal Aid Directorate and mandates the provision of legal assistance to qualifying persons in criminal matters. However, scholars and practitioners have consistently documented the inadequacy of the system. **Madhuku** (2010) observed that the Legal Aid Directorate is 'severely under-resourced with a ratio of legal aid practitioners to qualifying persons that renders effective representation structurally impossible.' **Ncube** (2017) further noted that legal aid is predominantly available in urban centers leaving accused persons in rural and remote areas almost entirely without access.



The Law Society of Zimbabwe (2020) reported that the Directorate operates with fewer or less than 40 legal aid practitioners nationally serving a population of over 15 million people, with each practitioner managing caseloads that are far exceeding recommended standards. This systemic deficiency has created a two-tier justice system in which the quality of one's legal representation and consequently, one's sentencing outcome is largely determined by one's ability to pay.

THEORETICAL FRAMEWORK

This study is grounded in two complementary theoretical frameworks. First, *Due Process Theory*, as articulated by **Packer** (1964) posits that the legitimacy of the criminal justice system depends upon scrupulous adherence to procedural safeguards, including the right to competent legal representation. Any system that produces outcomes systematically disadvantaging those unable to afford representation violates due process norms at its core. Second, the *Equal Protection Principle* derived from the Constitutional law and International human rights law, demands that the State treat all accused persons equally before the law, regardless of economic status. Together, these frameworks provide a normative basis for evaluating the empirical findings of this study.

METHODOLOGY

Research Design

This study adopted a descriptive quantitative research design. This approach was chosen because it enables the systematic collection and statistical analysis of data, facilitating the identification of patterns and correlations between variables in this case, legal representation and sentencing outcomes. The quantitative approach also enhances the objectivity and replicability of the study's findings (**Creswell**, 2014).

Population and Sampling

The studied population comprised of magistrates, legal aid practitioners, private criminal defense lawyers and former accused persons who had appeared before Magistrates' Courts in Harare and Bulawayo. A stratified random sampling technique was employed to ensure representation across all stakeholder groups. A total of 80 respondents were selected: 20 magistrates, 20 legal aid practitioners, 20 private defense lawyers and 20 former accused persons. This sample size was determined to be adequate for the purposes of the study given the defined population and the scope of the research (**Cohen, Manion & Morrison**, 2018).

Data Collection Instrument

Data was collected using a structured questionnaire administered via Google Forms. The questionnaire comprised of three sections:- (i) demographic questions capturing age, gender, education level, and professional background; (ii) research-specific questions aligned with the study's objectives, including *Likert-scale* items measuring perceptions of the influence of legal representation on sentencing and multiple-choice items on the accessibility of legal aid; and (iii) open-ended questions inviting respondents to share qualitative observations and recommendations. The questionnaire was piloted with 10 respondents prior to full administration to test for clarity and reliability.

Data Analysis

Quantitative data was analyzed using the Statistical Package for Social Sciences (SPSS) version 26. Descriptive statistics including frequencies, percentages, means and standard deviations were computed. **Pearson's** correlation coefficient was used to test the strength and direction of the relationship between legal representation and sentencing outcomes. A significance level of $p < 0.05$ was adopted. Results are presented in tabular and narrative form.

Ethical Considerations

Ethical clearance was obtained from the relevant institutional authority prior to data collection. Participation was entirely voluntary and informed consent was obtained from all respondents. Anonymity and confidentiality were maintained throughout the study. No incentives were offered for participation and respondents were informed of their right to withdraw at any stage without consequence.

FINDINGS AND DISCUSSION

Demographic Profile of Respondents

Of the 80 respondents, 52 (65%) were male and 28 (35%) were female, reflecting the gender composition of the legal profession in Zimbabwe. The majority of respondents (62.5%) were between the ages of 30 and 50 years. In terms of educational attainment, all legal practitioners and magistrates held a minimum of a bachelor of laws degree (LLB), while former accused persons reported varied levels of education, with 40% having completed secondary school and 30% having attained only primary level education. The differential in educational background between legal professionals and accused persons is itself indicative of the knowledge and resource asymmetry that characterizes criminal proceedings.

Legal Representation and Sentencing Outcomes

The study's central finding is that legal representation has a statistically significant impact on criminal sentencing outcomes. **Pearson's** correlation analysis revealed a strong negative correlation ($r = -0.74$, $p < 0.001$) between the absence of legal representation and the likelihood of receiving a custodial sentence. This indicates that as legal representation decreases, the probability of a custodial sentence increases. Specifically, 78% of former accused persons who appeared unrepresented reported having received custodial sentences, compared to only 34% of those who had been legally represented.

Furthermore, 85% of magistrates agreed or strongly agreed with the statement that 'the absence of legal representation adversely affects the sentencing outcome for an accused person.' Among legal aid practitioners, 90% indicated that their clients who could not be adequately prepared for trial due to resource constraints received more severe sentences than similarly situated accused persons represented by private counsel. These findings are consistent with the broader literature (**Williams & Redlich**, 2016; **Kariuki**, 2018) and confirm the hypothesis that legal representation is a significant determinant of sentencing outcome.

Barriers to Accessing Legal Representation

Respondents identified multiple barriers to accessing legal representation. The most frequently cited barrier was financial incapacity (cited by 87.5% of former accused persons), followed by lack of awareness of legal rights and available services (72.5%), geographic inaccessibility of legal aid offices (65%) and the perceived ineffectiveness of legal aid services (57.5%). These findings corroborate with the observations of **Ncube** (2017) and the Law Society of Zimbabwe (2020) regarding the systemic deficiencies of the legal aid system.

Notably, 70% of former accused persons reported that they had not been informed of their right to legal representation at the time of their arrest or first appearance in court, despite this being a constitutional obligation under section 70(1)(d) of the Constitution. This points to a systemic failure in the implementation of constitutional rights, at the level of law enforcement and the judiciary.

Perceptions of Fairness and Equality

When asked whether the criminal justice system was treating all accused persons equally regardless of their

ability to afford legal representation, 82.5% of all respondents including 75% of magistrates responded in the negative. This is a remarkable finding, as it reflects a widely shared perception among justice system insiders that the system does not, in practice, deliver equal justice to rich and poor alike. As one magistrate respondent observed in an open-ended response: 'The law says everyone is equal, but the reality in our courts is that those who cannot afford lawyers are at a serious disadvantage from the moment they are charged.'

This finding aligns with **Packer's** (1964) due process critique and underscores the normative gap between the constitutional promise of equality before the law and the systemic realities of criminal adjudication in under-resourced justice systems.

CONCLUSION AND RECOMMENDATIONS

This study has demonstrated through empirical evidence, that legal representation has a significant and measurable impact on criminal sentencing outcomes for unrepresented accused persons in Zimbabwe. The absence of competent legal representation substantially increases the likelihood of a custodial sentence, prolongs imprisonment terms and reduces the chances of acquittal. The legal aid system, as currently constituted, is unable to bridge this gap effectively and there still exists a widespread perception even among judicial officers that the criminal justice system does not deliver equal justice to all.

These findings carry significant implications for the legitimacy of the criminal justice system. A system that systematically produces worse outcomes for accused persons on the basis of economic status is not merely unjust in individual cases but it undermines the foundational principles of due process and equality before the law that give the criminal law its moral authority. Reform is not merely desirable; it is constitutionally and ethically imperative.

Recommendations

- 1. Increased funding for the Legal Aid Directorate.** The government should significantly increase the budget allocation to the Legal Aid Directorate to enable it to recruit additional practitioners, expand its geographic reach and reduce caseloads to manageable levels.
- 2. Mandatory Public Defender Programme.** Zimbabwe should establish a statutory public defender programme, separate from the Legal Aid Directorate modeled on successful examples in South Africa and the United Kingdom to ensure all accused persons in serious criminal matters are represented.
- 3. Constitutional rights awareness campaigns.** Law enforcement agencies and the judiciary should implement structured awareness programmes to ensure all accused persons are promptly and clearly informed of their right to legal representation at the point of arrest, as required by section 70(1)(d) of the Constitution.
- 4. Pro bono obligations for the legal profession.** The Law Society of Zimbabwe should strengthen mandatory pro bono requirements for all registered legal practitioners, ensuring that the burden of access to justice is shared equitably across the profession.
- 5. Sentencing guidelines reform.** The judiciary should develop and implement sentencing guidelines that explicitly require judicial officers to consider and record whether an accused person was represented or unrepresented, thereby creating accountability and enabling the monitoring of sentencing disparities.

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