

# Private prosecutions in Zimbabwe

## Victim participation in the criminal justice system

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*Two recent developments have changed the face of private prosecutions in Zimbabwe. Firstly, the prosecutor-general had to decide: (1) whether private companies may institute private prosecutions; and (2) whether the prosecutor-general, if he had declined to prosecute, was obliged to issue a certificate to a crime victim to institute a private prosecution. Both questions were answered in the negative. Victims of crime challenged this in court and the Supreme Court ruled that the prosecutor-general is obliged to issue a certificate should he decline to prosecute. In response, the prosecutor-general adopted two strategies: (1) to apply to the Constitutional Court against the Supreme Court's ruling that he is obliged to issue such a certificate; and (2) to have the relevant sections of the Criminal Procedure and Evidence Act (CPEA) amended so that the law clearly states that he is not obliged to issue such a certificate, and that companies are not permitted to institute private prosecutions. This article argues that despite these recent amendments to the CPEA, there are cases where the prosecutor-general may be compelled to issue a certificate to a crime victim to institute a private prosecution. These developments are important for South Africa, as a South African non-governmental organisation has petitioned the courts and argued that a law prohibiting it from instituting private prosecutions is discriminatory and therefore unconstitutional. South African courts may find Zimbabwean case law helpful in resolving this issue.*

One feature of an effective government is its ability to enforce the law and have those who break it prosecuted and sanctioned. All over the world, government officials are entrusted with the responsibility of prosecuting those alleged to have broken the law. However, in Zimbabwe and some other African jurisdictions such as Swaziland, South Africa, Uganda, Zambia, Seychelles and Mauritius, a public prosecutor can choose whether or not to prosecute a suspect, even if there is evidence that the suspect committed an offence.<sup>1</sup> This discretion is open to abuse; a fact that courts in countries such as the United Kingdom (UK) and South Africa have

recognised.<sup>2</sup> It is partly because of this that in some countries a victim of crime has the right to institute a private prosecution against a person they believe perpetrated a crime against them. Since public prosecutors traditionally have the duty and right to prosecute crimes, the victim's right to institute a private prosecution is not welcomed by some public prosecutors, who view it as a threat to their independence. As the Supreme Court of Zimbabwe stated in *Telecel Zimbabwe (Pvt) Ltd v AG of Zimbabwe N.O.*, 'the practice has always been for the State jealously to guard its right to prosecute offenders'.<sup>3</sup>

Two recent legal developments have changed the face of private prosecutions in Zimbabwe. These

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relate to: (1) whether private companies may institute private prosecutions; and (2) whether the prosecutor-general, in the event that he has declined to prosecute, is obliged to issue a certificate to a victim of crime allowing him or her to institute a private prosecution. Both questions were answered in the negative by the prosecutor-general. Victims of crime went to court to seek clarity on these issues (these cases are discussed below). The Supreme Court has held that juristic persons, such as private companies, have a right to institute private prosecutions and that the prosecutor-general is obliged to issue a certificate should he decline to prosecute. In response, two strategies were adopted: (1) the prosecutor-general applying to the Constitutional Court challenging the Supreme Court's ruling; and (2) the government having the relevant sections of the Criminal Procedure and Evidence Act (CPEA) amended to make it clear that the prosecutor-general is not obliged to issue such a certificate, and that companies are not permitted to institute private prosecutions. In this article I argue that there will be cases where the prosecutor-general may be compelled to issue a certificate to a victim of crime to institute a private prosecution, even if recent amendments to the CPEA are passed. These developments are important for South Africa, because a South African non-governmental organisation (NGO) has petitioned the courts and argued that a law prohibiting it from instituting private prosecutions is discriminatory and therefore unconstitutional. South African courts may find Zimbabwean case law helpful in resolving this issue.<sup>4</sup> Although the article highlights the CPEA amendments, it is beyond its scope to analyse them. Rather, I explore the options that are likely to be available to a victim of crime, should the prosecutor-general decline to issue a certificate to institute a private prosecution. In order to put the discussion in context, it is important to review the law governing private prosecutions in Zimbabwe and the circumstances that have led to its amendment.

## Private prosecutions in Zimbabwe and recent case law from the Supreme Court

In Zimbabwe the issue of private prosecutions is not dealt with in the Constitution but in the Criminal

Procedure and Evidence Act (CPEA).<sup>5</sup> There are many sections relevant to private prosecutions in the CPEA but only those relevant to this article are discussed.

Section 13 of the CPEA provides that where the prosecutor-general has declined to prosecute any offence, '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 institute a prosecution against the alleged perpetrator. Section 14 provides a list of persons who have a right to institute a private prosecution; that is, people with 'substantial and peculiar interest' as a result of the commission of the offence. This list includes the victim of a crime, a husband in the case of an offence committed against his wife (but not vice versa), and the legal guardian or representative of some categories of victim.

Section 16(1), which is to be amended, provides that:

(1) Except as is provided by subsection (2), it shall not be competent for any private party to obtain the process of any court for summoning any party to answer any charge, unless such private party produces to the officer authorised by law to issue such process a certificate signed by the [prosecutor-general] that he has seen the statements or affidavits on which the charge is based and declines to prosecute at the public instance, and in every case in which the [prosecutor-general] declines to prosecute he shall, at the request of the party intending to prosecute, grant the certificate required.<sup>6</sup>

Section 20 provides that:

In the case of a prosecution at the instance of a private party, the [prosecutor-general] or the local public prosecutor may apply by motion to any court before which the prosecution is pending to stop all further proceedings in the case, in order that prosecution for the offence may be instituted or continued at the public instance and such court shall, in every such case, make an order in terms of the motion.<sup>7</sup>

The following are most important among these sections: One, a victim of crime has a right to institute

a private prosecution. This is a right provided for in section 14 of the CPEA. Two, under section 14 the categories of people who may institute private prosecutions are limited.

Referring to jurisprudence from South African courts, the Supreme Court of Zimbabwe held in *Telecel Zimbabwe (Pvt) Ltd v AG of Zimbabwe N.O.* that:

The object of the phrase ['substantial and peculiar interest'] was clearly to prevent private persons from arrogating to themselves the functions of a public prosecutor and prosecuting in respect of offences which do not affect them in any different degree than any other member of the public; to curb, in other words, the activities of those who would otherwise constitute themselves public busybodies ... Permission to prosecute in such circumstances was conceived as a kind of safety-valve. An action for damages may be futile against a man of straw and a private prosecution affords a way of vindicating those imponderable interests other than the violent and crude one of shooting the offender. The vindication is real: it consoles the victim of the wrong; it protects the imponderable interests involved by the deterrent effect of punishment and it sets at naught the inroad into such inalienable rights by effecting ethical retribution. Finally it effects atonement, which is a social desideratum.<sup>8</sup>

Three, for a victim of crime to institute a private prosecution s/he needs a certificate from the prosecutor-general. But having such a certificate does not automatically mean a victim must institute a private prosecution. Apart from the fact that s/he must offer a security deposit to the court, s/he may not proceed with a private prosecution if the court thinks it an abuse of process. The Supreme Court held that 'notwithstanding the possession of a certificate, the court may, in the exercise of its inherent power to prevent abuse of process, interdict a private prosecution pursuant to such certificate'.<sup>9</sup>

Another issue is whether under section 16 of the CPEA the prosecutor-general is obliged to issue a certificate should he decline to prosecute. In answering this question, the Supreme Court referred

to a case from the High Court of South Africa that dealt with a similar issue, and held that:

The language of s 16(1) of the CP&E Act is categorically clear ... In any event, in construing this provision, we must also have regard to the [prosecutor-general's] constitutionally guaranteed independence and wide discretion in matters of criminal prosecution. Taking this into account, it seems to me that the exercise of his discretion vis-à-vis any intended private prosecution involves a two-stage process. The first stage is for him to decide whether or not to prosecute at the public instance. If he declines to do so, the next stage comes into play, i.e. to decide whether or not to grant the requisite certificate. In so doing, he must take into account all the relevant factors prescribed in s 13 of the Act ... If he cannot show any such interest, the [prosecutor-general] is entitled to refuse to issue the necessary certificate. However, where the private party is able to demonstrate the required 'substantial and peculiar interest' and attendant criteria, the [prosecutor-general] is then bound to grant the certificate *nolle prosequi*. At that stage, his obligation to do so becomes peremptory and s 16(1) can no longer be construed as being merely permissive or directory. This conclusion clearly does not impinge on the [prosecutor-general's] principal discretion to prosecute or not to prosecute at the public instance. That decision is an incident of his constitutional primacy in the sphere of criminal prosecution and is generally not reviewable. Indeed ... [he can take over private proceedings under section 20 of the CPEA]. However, once he has declined to prosecute and is met with a request for private prosecution by a party that satisfies the 'substantial and peculiar interest' requirement of s 13, he has no further discretion in the matter and is statutorily bound by s 16(1) to issue the requisite certificate.<sup>10</sup>

The Supreme Court makes it clear that the prosecutor-general is not obliged to issue a certificate simply because he has declined to prosecute. However, the prosecutor-general is obliged to issue a certificate once the private party has demonstrated that they have a substantial and peculiar interest and

that they meet the other criteria under section 16. The challenge though is that the South African High Court decision, which was relied on by the Supreme Court in its decision on this issue, has been criticised in a subsequent High Court (full bench) decision.<sup>11</sup> The criticism was that there was a long line of cases that expressly stated that it is not for the South African director of public prosecutions but for the court to determine whether a private prosecutor has a substantial and peculiar interest in the matter. In 2015 the South African Supreme Court of Appeal stated that '[t]he prosecuting authority is obliged to furnish a certificate called *nolle prosequi* to someone who wishes to prosecute privately'.<sup>12</sup> This means that it is no longer a valid precedent in South Africa.

Another important issue that the court dealt with is whether juristic persons and in particular companies may institute private prosecutions. It should be recalled that the CPEA does not expressly state that legal/juristic persons may or may not institute private prosecutions. The prosecutor-general's argument, based on South African case law, was that companies may not institute private prosecutions. The Supreme Court relied on earlier jurisprudence from the then Federal Court of Rhodesia and Nyasaland, and Zimbabwean legislation to hold that there is nothing that expressly prohibits companies from instituting private prosecutions. The court also distinguished the relevant South African case law on the subject and held that a 'private corporation, is entitled to institute a private prosecution in terms of s 13 of the Act. However, this entitlement is subject to the issuance of a certificate *nolle prosequi* under s 16(1)' by the prosecutor-general if he/she is satisfied that the private corporation 'meets the requirements of s 13'.<sup>13</sup> What is not clear is whether a private company has a right or an entitlement to institute a private prosecution. The court uses both words interchangeably. What is clear is that the fact that the victim is a private corporation may not be the sole reason upon which the prosecutor-general bases his or her decision to refuse to issue a certificate to institute a private prosecution.

Another issue that the court dealt with was whether the prosecutor-general's decision not to issue a certificate to a victim who meets the requirements in the Act is reviewable. The court, referring to English

and Zimbabwean case law on the issue of reviewing irrational or unreasonable administrative decisions, held that on the facts of the case it was dealing with, the prosecutor-general's decision not to issue a certificate to the applicant could not be reviewed on the ground of irrationality. This is because the facts did not show that 'his decision is so irrational in its defiance of logic or accepted moral standards that no reasonable person in his position who had applied his mind to the matter could have arrived at it'.<sup>14</sup>

On the issue of whether the respondent's decision was illegal and therefore reviewable, the court held that:

[T]urning to the legality of the respondent's decision not to issue his certificate, it is clear that he has failed to exercise his statutory powers on a proper legal footing. Having declined to prosecute at the public instance, he should have considered whether or not the appellant satisfied the 'substantial and peculiar interest' requirement of s 13 of the Act. He did not do so but proceeded to decline his certificate *nolle prosequi* on the basis that there was insufficient evidence to prosecute. He consequently failed to correctly understand and give effect to the requirements of s 16(1) which regulated his decision-making power. Put differently, by withholding his certificate, he was guilty of an error of law by purporting to exercise a power which in law he did not possess. He thereby contravened his duty to act lawfully in accordance with the peremptory injunction of s 16(1). This constitutes a manifest misdirection at law rendering his decision reviewable on the ground of illegality.<sup>15</sup>

The above decision makes it very clear that under certain circumstances the prosecutor-general is obliged to issue a certificate to a private prosecutor to prosecute.

However, the prosecutor-general was determined to render that court ruling irrelevant, and set about his task, using two strategies. One, he approached the Constitutional Court, arguing that he is the only person with the discretion to decide whether or not to issue a certificate. This application was a result of contempt of court proceedings brought against him

for refusing to issue a certificate to the guardian of a minor rape victim to institute a private prosecution against a powerful politician who allegedly sexually assaulted and raped the girl and whom the prosecutor-general declined to prosecute. This application was heard at the end of October 2015 and dismissed (see discussion below).

The second strategy, which is likely to render the outcome of the application to the Constitutional Court moot, involved the November 2015 National Assembly's passing of the Criminal Procedure and Evidence Amendment Bill which, inter alia, amends section 16 of the CPEA. This was the second time that amendments to section 16 had been passed. They were first passed in October 2015. Following fierce opposition from some members of Parliament, the initial amendments were withdrawn and the new amendments were introduced. However, before the amendment can come into force, the bill must be approved by Senate and sent to the president for assent, following which, the date on which the act will commence must be published in the Government Gazette. Six days after the initial amendments were passed by the National Assembly and before the bill could be tabled before Senate, the Constitutional Court found the prosecutor-general guilty of contempt of court because of his refusal to issue certificates to private prosecutors. He was sentenced to 30 days' imprisonment unless he issued the certificates within 10 days. He issued the certificates and in January 2016 one of the victims instituted a private prosecution against a powerful politician who allegedly sexually assaulted and raped her.

At this point it is apt to review the amendments.

## Amendments to the CPEA

In this section I highlight the amendments introduced with regard to private prosecutions. The Criminal Procedure and Evidence Amendment Bill amends various sections of the CPEA.<sup>16</sup> Relevant to this discussion is section 16. The memorandum to the bill states that:

Under section 16 of the Act, no one can institute a private prosecution unless the prosecutor-general has issued a certificate stating that he or she does not intend to prosecute the case in

the name of the State. This clause will remove any suggestion that the prosecutor-general is compelled (despite being constitutionally mandated to initiate or discontinue all prosecutions) to issue such a certificate. It also prohibits any corporate body or registered or unregistered association from applying for or receiving such a certificate.

Clause 6, which amends section 16, provides that, as a general rule, a private prosecutor shall not institute a private prosecution if s/he is not in possession of a certificate from the prosecutor-general stating that 'he or she has seen the statements or affidavits on which the charge is based and declines to prosecute at the public instance'. The prosecutor-general is obliged to grant the certificate in question if a private prosecutor requests it in writing (in the form of a sworn statement), and if the applicant:

(i) is the victim of the alleged offence, or is otherwise an interested person by virtue of having personally suffered, as a direct consequence of the alleged offence, an invasion of a legal right beyond that suffered by the public generally; and (ii) has the means to conduct the private prosecution promptly and timeously; and (iii) will conduct the private prosecution as an individual (whether personally or through his or her legal practitioner), or as the representative of a class of individuals recognised as a class for the purposes of the Class Actions Act.<sup>17</sup>

The amendment allows the prosecutor-general to refuse to grant a certificate to the applicant if one of the following arise: '(a) that the conduct complained of by the private party does not disclose a criminal offence; or (b) that on the evidence available, there is no possibility (or only a remote possibility) of proving the charge against the accused beyond a reasonable doubt; (c) that on the facts alleged, there is a civil remedy available to the private party that will meet the justice of his or her case equally well or better; (d) whether the person to be prosecuted has adequate means to conduct a defence to the charge; or (e) that it is not in the interests of national security or the public interest generally to grant the certificate to the private party.'<sup>18</sup> Some members of Parliament were opposed to these amendments for

the following reasons: one, they deprive victims of crime their right to institute a private prosecution as they give the prosecutor-general discretion in issuing certificates; two, they are contradictory in that they appear to oblige the prosecutor-general to issue a certificate should he decline to prosecute, but give him the discretion to decide whether or not to issue the certificate; three, they are unconstitutional because they empower the prosecutor-general to exercise judicial powers (determining whether or not a victim of crime has a prima facie case); and four, they deprive victims of their right to remedy should the prosecutor-general decline to prosecute.<sup>19</sup> These submissions address all significant weaknesses in the amendments.

In the next and final section, I consider the future of private prosecutions in Zimbabwe in light of these amendments. I give particular attention to whether there are circumstances in which the prosecutor-general may be compelled to issue a certificate to a victim of crime.

## **The future of private prosecutions instituted by crime victims in Zimbabwe**

What are the issues likely to define or shape the future of private prosecutions in Zimbabwe? As stated earlier, some opposition members of Parliament were of the view that the amendments effected by section 16 are unconstitutional. If Senate were to pass the amendment and the president assents to the bill, its constitutionality may be challenged before the Constitutional Court and the court may declare it unconstitutional. Were the court to do so, one cannot rule out the possibility that some applications for private prosecutions will be declined. This is because the prosecutor-general has the discretion to refuse to issue a certificate.

Were this to happen, victims aggrieved by the prosecutor-general's decision would have to challenge it in court. As discussed above, the prosecutor-general's decision may be reviewed by a court if it is irrational or unreasonable. It may also be reviewed if it is illegal. If a court finds the decision not to issue a certificate to a private prosecutor to be irrational or unreasonable or illegal, it would have to

set it aside and order the prosecutor-general to issue such a certificate.

It should be noted that section 260(1)(b) of the Constitution provides that the prosecutor-general 'must exercise his or her functions impartially and without fear, favour, prejudice or bias'.<sup>20</sup> If a court finds that the decision not to issue a certificate to a private prosecutor was made contrary to any of the grounds laid down in section 260(b), that decision would have to be set aside and the prosecutor-general would have to issue a certificate. This is the case although section 260(1)(a) provides that the prosecutor-general shall be 'independent and is not subject to the direction or control of anyone'. It would be erroneous to interpret this provision to mean that the prosecutor-general cannot be ordered by a court to perform or refrain from performing an act. To interpret 'anyone' under section 160(1)(a) to include a court of law would be a mistake and would put the prosecutor-general above the law. It should also be noted that section 164(3) of the Constitution provides that 'an order or decision of a court binds the State and all persons and governmental institutions and agencies to which it applies, and must be obeyed by them'. The prosecutor-general's decision may also be reviewed under section 68(1) of the Constitution on administrative law grounds.

Related to this, the prosecutor-general may take over a private prosecution, whether based on a certificate he has issued voluntarily or after a court order, for the purpose of stopping it. As mentioned, section 20 of the CPEA allows a public prosecutor to take over a private prosecution. Whereas section 20 is clear that a public prosecutor may take over a private prosecution for the purpose of instituting or continuing with such a prosecution at the public instance, it does not state that a public prosecutor may take over a private prosecution for the purpose of stopping it. However, the moment a private prosecution is taken over by a public prosecutor, it ceases to be a private prosecution. A public prosecutor may therefore stop it. This means that a public prosecutor may decline such a prosecution using his discretion not to prosecute.

In Canada, the UK, Mauritius, Vanuatu, Tonga, Singapore, Samoa and Australia, public prosecutors



take over private prosecutions and either continue with them, as public prosecutions, or discontinue them.<sup>21</sup> On 4 September 2015 Zimbabwe's prosecutor-general published in the Government Gazette the 'General principles by which the National Prosecuting Authority decides whether and how to institute and conduct criminal proceedings', which, inter alia, states the circumstances in which he may take over and discontinue a private prosecution.<sup>22</sup> This raises the question of whether there are circumstances in which a public prosecutor's decision not to prosecute may be reviewed. The Administrative Justice Act categorises decisions to institute, continue or discontinue criminal proceedings and prosecutions as administrative actions. The challenge is that these decisions cannot be reviewed under this act. This is because the critical provisions of the act, which would have enabled the victim to know why a decision was taken by a public prosecutor to discontinue criminal proceedings, and to make representations to the prosecutor to challenge a possible discontinuation, are not applicable to the administrative decisions to institute, continue or discontinue criminal proceedings and prosecutions. This means the private prosecutor cannot make an application to the High Court to order the public prosecutor to supply reasons why he discontinued a prosecution. This means that a court may have to use its inherent common jurisdiction to review such decisions. And as explained, this would require the applicant to convince a court that the public prosecutor's decision to discontinue the prosecution was either irrational or illegal. Importantly, in Swaziland, Seychelles and South Africa, courts have held that a public prosecutor's decision to prosecute or not is not beyond judicial scrutiny.<sup>23</sup> Whether or not the above provisions of the Administrative Justice Act are constitutional in the light of section 68 of the Constitution, is debatable.

Section 62 of the Constitution of Zimbabwe provides that:

1. Every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every

level, in so far as the information is required in the interests of public accountability.

2. Every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right.
3. Legislation must be enacted to give effect to this right, but may restrict access to information in the interests of defence, public security or professional confidentiality, to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.<sup>24</sup>

In light of section 62 of the Constitution and in the spirit of transparency and accountability, one would expect the prosecutor-general to explain to a victim why he has decided not to prosecute, or to discontinue a private prosecution. The prosecutor-general's failure to share such information could be challenged on the basis that it violates the right to access information under section 62 of the Constitution.

For the prosecutor-general to continue withholding that information he must convince the court that he is doing so for any of the following three reasons in the interests of defence, public security or professional confidentiality. If the prosecutor-general indeed exercises his powers without fear, favour, prejudice or bias, one would expect him to establish and publish guidelines for victims wanting to challenge decisions not to prosecute. In some jurisdictions, including the UK and Scotland, such guidelines have been published.<sup>25</sup> The relevant legislation in Zimbabwe is the 2002 Access to Information and Protection of Privacy Act.<sup>26</sup> This act was enacted before the 2013 Constitution. It provides the right to access information (section 5), and the prosecutor-general's decision not to prosecute is not one of the records excluded from the application of the act. However, section 17(1)(e) of the act provides that '[t]he head of a public body shall not disclose to an applicant information whose disclosure would reveal any information relating to or used in the exercise of prosecutorial discretion'.<sup>27</sup> Under section 17(3)(a) of

the act, '[t]he head of a public body may disclose, after the completion of an investigation by the police, the reasons for a decision not to prosecute to:

(a) a person who was aware and had an interest in the investigation, including a victim or complainant, or relative or friend of a victim or complainant'.<sup>28</sup> In terms of section 2, read with the second schedule to the sct, the prosecutor-general is a head of a public body.

The Access to Information and Protection of Privacy Act thus gives the prosecutor-general the discretion not to disclose to a victim of crime the information relating to his decision not to prosecute. I argue that in the light of section 62(1) of the Constitution, a strong case may be made that section 17(3)(a) of the Access to Information and Protection of Privacy Act is unconstitutional, as it may be invoked by the prosecutor-general to evade public accountability relating to his decision not to prosecute.

## Conclusion

This article has dealt with the law relating to private prosecutions in Zimbabwe. I have focused on the possible effects of CPEA amendments on the ability of victims to participate in the criminal justice system by exercising their right to institute private prosecutions. I argued that the amendments are likely to limit but not to eliminate the right of these victims to institute private prosecutions. I have demonstrated that the prosecutor-general's decision not to issue a certificate to victims of crime to institute private prosecutions may be reviewed on the grounds of unreasonableness or illegality. It may also be reviewed under section 68 of the Constitution as an administrative action. I have also argued that section 17(3)(a) of the Access to Information and Protection of Privacy Act may be unconstitutional for giving the prosecutor-general the discretion to decide whether or not to make information relating to his decision not to prosecute available to a victim of crime. It is recommended that, in line with international trends that recognise the right of victims to participate in criminal justice systems, Zimbabwe should adopt measures aimed at strengthening such rights. These measures should include strengthening the right to institute private prosecutions.



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## Notes

- 1 *R v Ndlangamandla* (57/2001) [2005] SZHC 148 (15 December 2005). *Liebenberg v Minister of Safety and Security and Another* [2009] ZAGPPHC 88 (18 June 2009) para 19.18. *Masiko & Ors v The DPP & Ors* (Miscellaneous Cause 220 of 2008), <http://www.ulii.org/ug/judgment/high-court/2009/3> (accessed 10 February 2016). *Kaunda v People* [1992] ZMSC 1 (19 March 1992); (1992) S.J. 1 (S.C.), <http://www.zamlii.org/zm/judgment/supreme-court/1992/1> (accessed 10 February 2016). *Brioche & Ors v Attorney-General & Another* [2013] SCCC 2, <http://www.seyllii.org/sc/judgment/constitutional-court/2013/2> (accessed 10 February 2016). *Mohit v The Director of Public Prosecutions of Mauritius* (Mauritius) [2006] UKPC 20 (25 April 2006).
- 2 *Gujra R (on the application of) v Crown Prosecution Service* [2013] 1 All ER 612. *Freedom Under Law v NDPP and Others* 2014 (1) SACR 111 (GNP).
- 3 *Telecel Zimbabwe (Pvt) Ltd v AG of Zimbabwe N.O.*, SC 1/2014; Civil Appeal SC 254/11, 15.
- 4 See *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* 2016 1 SACR 308 (SCA).
- 5 Criminal Procedure and Evidence Act 1898 (as amended in 2004), Harare: Government Printer, ch. 9:07.
- 6 *Ibid.*, section 16(1).
- 7 *Ibid.*, section 20.
- 8 *Telecel Zimbabwe (Private) Limited v Attorney-General of Zimbabwe N.O.*, SC 1/2014, Civil Appeal SC 254/11, 6.
- 9 *Ibid.*, 16.
- 10 *Ibid.*, 18–19.
- 11 *Singh v Minister of Justice and Constitutional Development and Another* 2009 (1) SACR 87 (N). *Nundalal v Director of Public Prosecutions KZN and Others* [2015] ZAKZPHC 28 (8 May 2015).
- 12 *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development* [2015] ZASCA 206 para 9.
- 13 *Telecel Zimbabwe (Private) Limited v Attorney-General of Zimbabwe N.O.*, SC 1/2014, Civil Appeal SC 254/11, 19.
- 14 *Ibid.*, 23.
- 15 *Ibid.*, 24.
- 16 Criminal Procedure and Evidence Amendment Bill 2015 (HB 2-2015), Harare: Government Printer, 2015.
- 17 *Ibid.*, section 16(2)(a).
- 18 *Ibid.*, section 16(3).
- 19 See submissions by Hon. Ziyambi and Hon. Majome, *National Assembly Hansard*, 42:23, 24 November 2015, 41–45, <http://www.parzim.gov.zw/national-assembly-hansard/national-assembly-hansard-24-november-2015-vol-42-no-23> (accessed 10 February 2016).
- 20 Constitution of the Republic of Zimbabwe, Harare: Government Printer, 2013.



- 21 Jamil Ddamulira Mujuzi, The right to institute a private prosecution: a comparative analysis, *International Human Rights Law Review*, 4:222–255, 2015, 244–250.
- 22 *Zimbabwean Government Gazette*, XCIII:67, 4 September 2015 (General Notice 247 of 2015), 993–995.
- 23 *R v Ndlangamandla* (57/2001) [2005] SZHC 148 (15 December 2005) (Swaziland); *Brioche & Ors v Attorney-General & Another* [2013] SCCC 2 (Seychelles); *S v Sehoole* 2015 (2) SACR 196 (SCA) para 12 (South Africa).
- 24 Constitution of the Republic of Zimbabwe, Harare: Government Printer, 2013, Section 62.
- 25 Crown Prosecution Office, Victims' Right to Review Scheme, 2014, [http://www.cps.gov.uk/victims\\_witnesses/victims\\_right\\_to\\_review/](http://www.cps.gov.uk/victims_witnesses/victims_right_to_review/) (accessed 10 February 2016); Crown Office and Procurator Fiscal Service, Lord Advocate's rules: review of a decision not to prosecute – Section 4 of the Victims and Witnesses (Scotland) Act 2014, [http://www.crownoffice.gov.uk/images/Documents/Victims\\_and\\_Witnesses/Lord%20Avocates%20Rules%20-%20June%2015%20v2.pdf](http://www.crownoffice.gov.uk/images/Documents/Victims_and_Witnesses/Lord%20Avocates%20Rules%20-%20June%2015%20v2.pdf) (accessed 10 February 2016).
- 26 Access to Information and Protection of Privacy Act 2002, Harare: Government Printer, ch. 10:27.
- 27 *Ibid.*, section 17(1)(e).
- 28 *Ibid.*, section 17(3)(a).