SUPPORTING
THE LEGAL PROFESSION

Alex Glassbrook reports on the Advocacy Training Council’s work in Zimbabwe and finds encouraging signs of judicial independence, an active Law Society and a reinvigorated Bar

“Our quest for the rule of law has nothing to do with politics as all we want is the same legal system, the same standards, for whoever appears before the courts, regardless of their political affiliation.”

Beatrice Mpetwa

In November 2013 a team from the Advocacy Training Council (ATC) – Desmond Browne QC, Anesta Weekes QC, Andrew Moran and Alex Glassbrook – travelled to Zimbabwe to teach advocacy technique to Zimbabwean lawyers. This was the ATC’s fourth training trip to Zimbabwe, teaching attorneys and some of the reinvigorated independent Bar how to teach advocacy themselves, in response to a request by the Law Society of Zimbabwe (LSZ) during a prior visit in 2010.

The ATC training, using a “training the trainers’ approach, was intended to provide LSZ with its own, self-sufficient faculty of advocacy trainers, in order to maintain both professional skills generally and to serve as part of a CPD programme. The first point particularly the lack of cross-examination skills amongst advocates was the spur. Judges had complained to LSZ that trials were being disrupted by a lack of competence amongst advocates examining witnesses. Parties’ prospects of success, both in criminal and civil cases (and in a country in which police action was often controversial and the death penalty had been retained) were seriously undermined. From an organisational perspective, LSZ’s independence as a regulatory body was largely dependent upon its ability to provide an effective CPD programme. The independence of lawyers has frequently been attacked by the state. An independent LSZ serves an important role in Zimbabwean civil society. Between October 2011 and November 2013 ATC conducted four training events in Zimbabwe: two in the capital Harare and two nationwide, when we also travelled out of the capital to Bulawayo and Mutare.

New constitution and Presidential election
The news from Zimbabwe during the (British) summer was the Presidential election of 31 July 2013. Held on that date despite strong opposition concerns as to the accuracy of voter information (the register of voters was not released in time to be verified, against a background of the use of “ghost voters” in past elections) and the danger of large-scale, unverifiable vote-rigging, the result was the election of Robert Mugabe as President and the end, at least for the time-being, of the opposition MDC’s role in government.

Before the election a new “Constitution for Zimbabwe” – the first since the much-amended “Lancaster House” constitution – had
controversially been given unanimous parliamentary approval, even given some provisions which appeared to be at odds with core opposition policies.

Two key features of the new constitution — and lines along which it appears ZANU-PF (the party of President Mugabe) and the opposition (the two wings of the MDC, one of which was headed by Prime Minister Morgan Tsvangirai) were divided during the constitutional drafting process were the extent to which: (a) Zimbabwe’s liberation struggle against colonial rule by Britain should be recognised as a guiding constitutional principle; and (b) fundamental human rights and accountability of the state ought to be guaranteed. In some areas (e.g. compulsory land acquisition by the state of agricultural land) the two were in potential conflict, along political lines. Nevertheless the constitution, enshrining both points, received unanimous parliamentary approval.

Important constitutional questions have therefore been left to the courts, in particular the new Constitutional Court. Whilst the new constitution guarantees the independence of the judiciary, that was also true of the previous constitution, under which the reality was, in the view of many Zimbabweans and international observers, that the judiciary was politically compromised. Whether examples of judicial independence will increase under the new constitution remains to be seen. But there are some encouraging signs.

Beatrice Mtetwa

Readers of Counsel (May 2013 p 33) will remember that Beatrice Mtetwa, a former LSZ President, was arrested and imprisoned in March 2013 after her requests for production of a search warrant and inventory of items seized in a police raid at the office of her client — a senior official in the office of Prime Minister Morgan Tsvangirai — were met with instant arrest on a charge of obstructing the course of justice. The Presidential election was impending and tension was high. Beatrice was the country’s most celebrated lawyer.

Beatrice’s mobile phone — with which she was alleged to have photographed the scene and which contained legally privileged texts — was seized and Beatrice was detained and removed by police to a location initially unknown. An emergency application for bail was made and granted, by High Court Judge Charles Hungwe, but pointedly ignored by the police. Colleagues worldwide, including the Bar Council, protested. Beatrice was remanded in custody by Harare Provincial Magistrate Marechwanazvo Gofa. After eight days of detention, she was released upon the order of High Court Judge Joseph Musakwa, the state having opposed bail throughout.

On an evening in early November 2013, Beatrice — in the midst of her trial, representing herself before magistrate Mrs Rumbidzai Mugwagwa — met us in Harare, to hear how the training was progressing. We were glad to report that it was going well. The numbers were encouraging — particularly of young and female lawyers — and the student teachers were working hard. Demand for advocacy training had remained high. It was remarkable, though typical of her, that Beatrice made time to meet us to discuss legal education, as it turned out that on that evening she was completing the draft of a written submission of no case to answer against her in the trial before Mrs Mugwagwa. Beatrice was acquitted a matter of weeks later, on 26 November, the magistrate finding the police evidence contradictory, that there was no evidence that she had taken photographs and that, even if there had been such evidence, to do so would not have been an offence. The acquittal was described as a sign of judicial independence.
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Justice Charles Hungwe
In Mutare we met the judge who had ordered Beatrice’s release and whose order had been ignored, Charles Hungwe. Over dinner in the garden of Tino Bere, another past President of the Law Society and the force behind the advocacy training programme, the judge told us of his time as a young platoon commander in the liberation war and how upon the ceasefire his mother didn’t recognise him when he arrived at an assembly point, out of the bush. He described his early career in the law just after independence, as a High Court judge’s clerk, and his part in the founding of the war veterans’ association, to obtain pensions for the former guerrillas like the RAF pension that his judge received. A veteran himself (in the actual sense, rather than in the context of the later land invasions), he was criticised heavily for his order for Beatrice’s release.

Law Society Summer School, Nyanga
From Mutare we went to the Law Society's Summer School in the Nyanga mountains, close to the border with Mozambique. The conference was well attended and in record numbers – in part attributed to the subject matter of the new constitution and in part to the CPD requirement to which the conference contributed – particularly by young lawyers and by women. The Law Society, Emmerson Mnangagwa, was expected to attend but had other duties. His deputy, Mr Fortune Chasi, read the minister’s speech. The new constitution was the chief subject of the conference. Giving the legal practitioner’s view, Mr Promise Ncube noted that: “The conduct of the President is now subject to the ruling of the new Constitutional Court. It is no longer ‘business as usual’.”

The Supreme Court, Harare
Back in Harare, Justice Anne-Mary Gowora – who in May 2013 had visited the Supreme Court in London, the first Zimbabwean judge to visit the UK to observe advocacy and judicial college training – invited us to visit the Supreme Court of Zimbabwe. Justice Gowora was appointed to the Supreme Court in 2012. She had spoken sincerely of the importance of training and of supporting the rule of law in Zimbabwe.

Days before our visit to the Supreme Court, the Constitutional Court had ruled that prosecutions of an artist for insulting the President and of a newspaper editor and publishers for undermining confidence in the defence and security forces offended against the constitutional right of freedom of expression. The artist, Owen Maseko, had exhibited a painting depicting the Matabeleland massacres by Zimbabwean and North Korean forces in the 1980s, during the early years of independence under President Mugabe. The newspaper editor, Vincent Kahiya, published a story that law enforcement agencies had abducted human rights activists in 2008.

The Court (Deputy Chief Justice Luke Malaba) was reported to have described the statutory section relied upon by the state as draconian and to have required Justice Minister Mr Mnangagwa to show cause why it should not be declared unconstitutional.

Growth of the Bar
On the last day of the visit, our friend Fadzayi Mahere took us out for breakfast. After postgraduate study in the UK, Fadzayi returned to Zimbabwe and set up independent practice as a barrister in Advocates Chambers in Harare. Fadzayi also teaches property law at the law faculty of the University of Harare and is the author of an excellent blog (fadzayimahere.wordpress.com). In April she had blogged in support of Justice Charles Hungwe, haranguing in the wake of his order requiring Beatrice’s release.

Fadzayi is one of a number of lawyers who have moved out of employment with law firms to practise independently as a barrister. There is a relatively small Bar in Zimbabwe, but its numbers are increasing. One of the first Zimbabwean trainers taught by ATC – advocate Happias Zhou – was a member of Advocates Chambers in Harare before he was appointed as a Judge of the High Court in 2012.

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Ongoing support for Zimbabwean lawyers
Zimbabwe is prominently reported in the British media at points of likely crisis. Other than at the time of elections, it typically goes unreported. Discussion, when it appears, is usually negative. It would be natural to infer that the lawyers of Zimbabwe are not only brave (which would be correct) but also beleaguered, or even that their profession is on the brink of extinction. It is fortunately not the case. The economic and political conditions of Zimbabwe are difficult, but LSZ has planned and executed a practical response to those conditions. It has persisted in that strategy.

Our co-operation with Zimbabwean lawyers continues. Gray’s Inn is in the process of organising a mootng tournament between Zimbabwean and British students at the University of Harare. And LSZ has just announced its first, independent programme of training by its Faculty of Advocacy, comprising three sessions which are to take place across the country between March and July 2014. An ATC team has been invited to attend the final session of that training, as guests of the Faculty.

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