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2012: Zimbabwe's Year of 'Politicized Deception'?



Prime Minister, Morgan Tsvangirai.
-zimbabwepictures.com

2012 is a year in which our political leaders will appear as though they are very busy trying to resolve national problems when in fact they are resolving their own, argues political and social commentator, Takura Zhangazha



President Robert Mugabe
-zimbabwepictures.com

Predicting future events in Zimbabwe's general cultural practice is usually the preserve of spirit mediums, prophets and scientists. Political predictions are more difficult even for 'specialists' in that line of work. In Zimbabwe's case it is necessary to attempt at outlining potential key political developments for the year 2012, bearing in mind that in some quarters there is talk of a harmonized election while in others there is fear, foreboding as well as calls for electoral reform before any elections can be held. Further to this, there is also excitement in elite economic circles about the Community Share Ownership Trusts, Youth Funds and diamond sales, all of which indicate that these are issues that will take center stage as 2012 unfolds.

Whereas the Chinese have their own animal titled lunar calendar years (for example, the year of the 'boar' or even the year of the 'rat'), I think that the next twelve months in Zimbabwe should be referred to as the year of 'the people's politicised deception'. This is because the leaders of the inclusive government will once again individually try and hoodwink the people of Zimbabwe that they are serving their best interests while they slug it out in Cabinet and Parliament over



Anxious Zimbabweans press to vote in the March 2008 elections. -zimbabwepictures.com

elections, SADC mediation, diamonds and allowances. In order for this to be acceptable to their supporters, they will mix the personal with the political

and the political with the economic. The personal will be in relation to issues to do with the social and private lives of various leaders that will be made

public by an eager media, while the economic will be through the partisan

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Zimbabwe National Army entrenching Zanu PF partisanship

Coordinator's Note



dewaMAVHINGA

At the end of this month, the term of office for the commander of the Zimbabwe Defence Forces, General Constantine Chiwenga, will come to an end. There is raging debate already that Chiwenga and the police Commissioner-General Augustine Chihuri's contract which is also expiring monthend, should not be renewed. But rather that the two generals, widely viewed as highly partisan, should be replaced by professional, independent and non-partisan leaders from within the ranks of the military and the police force.

Indications are that president Mugabe and his Zanu Pf party are likely to disregard the Global Political Agreement (GPA) provisions requiring all appointments to senior government positions to be done after consultation and with the consent of the prime minister leading the Movement for Democratic Change. Information below sent to the Zimbabwe Briefing anonymously from a source within the military provides a glimpse into the operations of the military and profers reasons why it will be a significant challenge to uproot partisanship within the higher ranks of the military. The following is the brief account from the anonymous Colonel:

The leadership of the Zimbabwe National Army is widely viewed as very political, and is totally aligned to Zanu PF as it is drawn largely from the Zimbabwe African Nationalist Liberation Army (ZANLA), Zanu PF's military wing before independence in 1980. At independence the two liberation fronts – ZANLA and the ZAPU-aligned ZIPRA were united together with the Rhodesian Front military force under the leadership of ZANLA's General Solomon Mujuru (the late) who became the first black commander of the Zimbabwe Defence Forces (ZDF). From the beginning it was clear that the military leadership worked closely with Zanu PF, the political party, and that mistake of extreme partisanship at the top has persisted to this day.

After a short spell in leadership, General Mujuru turned to focus on his vast business empire that had been largely facilitated by his political connections and handed over leadership to General Vitalis Zvinavashe

(the late) who was even more partisan and who never brought any major changes to the ZDF other than misery and untold suffering to the serving members. Then after him came General Constantine Chiwenga, the current commander who was allegedly privately described by his juniors as a shallow political general in the wiki-leaks cables. Chiwenga is a veteran of the liberation struggle who served as a ZANLA combatant, and a businessman who was recently 'came out' as the best student in a university of Zimbabwe masters degree program in International Relations – a move widely interpreted to mean final preparations for a career in civilian politics.

Chiwenga, together with Colonel Mzilikazi, former director of military intelligence and now Deputy Commander of the 5th Brigade, are said to have moved across the country from camp to camp conducting 'military civic education,' a programme whose actual purpose appears to be to intimidate soldiers into supporting Zanu PF. At many of these military civic education programs Chiwenga openly declares his support for president Mugabe and says he expects nothing but the same from all "his" soldiers.

In order to further entrench Zanu PF support within the military, the Zimbabwe National Army has in recent years adopted a practice of recruiting sons and daughters of former and serving members whose loyalty to Zanu PF cannot be questioned. The recruiting Officers have been given strong instructions not to recruit anyone whose loyalty is questionable and whose family

history cannot be traced back to Zanu PF. This has resulted in many, unqualified new recruits coming from rural areas because that is where the Army leadership thinks Zanu PF enjoys a lot of support.

The Zimbabwe National Army, The Air Force of Zimbabwe, the Police and the Zimbabwe Prison Services have all also been of late given first preference to those who would have undergone the National Youth Service.

Once one has been recruited into the army, promotion is supposed to be on merit and in accordance to how many career courses one has successfully completed in order to prepare him or her for the next post. For instance for one to be promoted from a private to a lance Corporal he or she ought to have done the basic cadre course and any other relevant course that will be in line with the nature of the duties he/she is to assume. More so the promotion of these junior ranks is at the discretion of the Officer Commanding (mostly a major) on the recommendations of the Platoon commander (mostly a Lieutenant). However, this procedure has been abandoned in recent years in favour of promoting soldiers who are related to senior ranking army officers. Corruption has since taken its toll. Promotion is now largely based on who are you and who are you related to and more importantly on what contribution you have played to ensure that Zanu PF stays in power.

President Robert Mugabe, who is also the Commander-In-Chief of the defence forces, is personally responsible for the promotion of all commissioned officers. It appears

promotion at these levels is also no longer on merit, but on the basis of who can serve Mugabe and his party diligently and blindly. The lowest rank in the commissioned officers is a Second Lieutenant, followed by a Lieutenant, Captain, Major, Lieutenant Colonel, Colonel, Brigadier General, Major General, Lieutenant General and lastly General. The most influential ranks in the Zimbabwe National Army are from the rank of a Lieutenant Colonel and above. We refer to these ranks as 'political ranks' because it is president Mugabe who personally soldiers for promotion for his political ends. Promotion is no longer on merit but on political proximity to Zanu PF.

Although war veterans formed the first group of the army in 1980, most of them lacked in qualifications so they could not rise in ranks as the system at that time required one to go through military courses and pass them in order to be promoted. For more than twenty years after independence the war veterans were sidelined and forgotten on account of poor education that hindered promotion to senior ranks. After facing its first formidable challenge from the MDC in the 2000 elections, Zanu PF adopted a new practice in the army to suddenly promote to higher ranks the bulk of the war veterans (the former ZANLA combatants) who were aligned to Zanu PF. But the promotion did not apply ZIPRA war veterans aligned to ZAPU – a party effectively swallowed by Zanu PF in a dubious 1987 unity agreement – they were sidelined and were labeled sell-outs and "those who cannot be trusted to defend Zanu

PF."

Noting further that the grounds of appeal "are legendary by their lack of merit", the court found it "unacceptable for any representative of the Attorney General to shoot up the moment bail is pronounced and invoke section 121 without applying his/her mind to the basis to such invocation".

That is why it will be difficult for the army in Zimbabwe to rebel against Mugabe and his regime. That is also why it will be easy for the army to carry out a coup de tat in the event that any party other than Zanu PF wins national elections. It is also very important to state that most of the army generals and air force commanders are all Zanu PF to the core. Below them are those very loyal to them and to ZANU PF and they are the ones who are ear-marked to run the army once their 'bosses are gone.

So, with Zanu PF pushing for early elections which are clearly unlikely, it continues to resist any reforms to realign the political leadership of military to act in a manner consistent with the dictates of a multi-party democracy system ostensibly on the grounds that the party stands to benefit most from maintaining the status quo. A sustained push for the re-alignment of the security sector, which includes the injection of fresh blood at the top, is one key guarantee for a non-violent, free and fair election.

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ALL THE PRESIDENT'S MEN: Zimbabwe's service chiefs are said to be at the centre of the country's politics. -zimbabweinpictures.com

What legacy will you leave behind?

I recently had the wonderful privilege of watching some children playing and they were teasing each other about their future. The main issue was what each one would become and how their parents had played such an important role in raising them up to be “stars”. What touched my heart was that at about age five, these young minds seemed REALLY excited about the future and yet I’m sure they were clueless about their lived reality. Considering that it is the beginning of the year, I started to reflect on the hope that we, as Zimbabweans, derive from different aspects of our lives and what each one of us could do to ensure total transformation. It then dawned on me that as we begin the year, it would be good to nudge your intelligent minds about what my experience with these children evoked and also share my thoughts for 2012.

These young children of Zimbabwe are the cornerstone of hope and inspiration for us all, today and tomorrow. The children I saw playing inspired me to say, indeed, we need a better future for these young minds. It is crucial that we leave a lasting legacy and not feel ashamed when they grow up and ask us what we did to

make their future bright. In that regard I thought it worthwhile for you and me to strive to ensure that in whatever we do this year, let us advocate for transformation that will bring about the expected future for our children. This means demanding for whatever is rightfully ours in every sector of this nation. I will leave you to think of what you can do to brighten the corner where you are – after all, you are fully aware of what needs to be worked on so your future and that of the younger generations becomes brighter!

2012 is a watershed year for Zimbabwe in all respects. I spoke to some people who strongly believe this could be our 1979 in as far as the history of the country is concerned. Well, whether we like it



or not, that is true. It is a year that we need to make up our minds on how we want to be remembered in the nation’s history books. It is a year where there is need for serious commitment and dedication to transforming Zimbabwe into a country that its people are proud

to be Zimbabwean. No to these poor standards of living, life has to be lived in full and enjoyed fully! The rights of the majority have to be respected and all freedoms enhanced, with a special emphasis to media and association. Things just have to shift for the better and it is you and me that have the power to do this so let us work at it, nothing is impossible under the sun neither is anything new. We can do this indeed.

Finally, it is critical that in 2012, you and I remember that it has been declared

as the year of credible reforms. There is urgent need for us to work at ensuring that there is a constitution that truly represents the will of the people of Zimbabwe. This is in addition to reforms being made in areas of the various service delivery areas and also some government institutions. I will not be dictatorial in outlining the areas but will leave you to get creative, innovative and serious by selecting the areas where you want to get active and bring about total transformation to your life, your children’s lives and the general Zimbabwean populace.

Well, there surely is lots of work lying ahead of us this year. Let us keep the focus and inspiration - pray if you have to, laugh, dance, talk, organize - just do whatever it takes to make sure that when our children ask us what exactly we did to contribute to the legacy of democratizing Zimbabwe, we will not stammer but stand up boldly to share our side of the contributions. Have a wonderful and fulfilling 2012!

Grace Chirenje-Nachipo is an activist. She also serves as Vice Chairperson of the Crisis in Zimbabwe Coalition.

SUMMARY OF HIGH COURT JUDGMENT DISMISSING THE ATTORNEY GENERAL’S APPEAL AGAINST GWANDA MAGISTRATES COURT’S DECISION TO ADMIT MMPZ STAFFERS TO BAIL

Following the Gwanda Magistrates Court’s decision to grant US\$50 bail to MMPZ advocacy officers Fadzai December and Molly Chimhanda, and Public Information Rights Forum committee chairman for Gwanda, Gilbert Mabusa on the December 7th, 2011, the Attorney-General (“AG”) immediately invoked section 121 (1) of the Criminal Procedure and Evidence Act signifying his intention to appeal against the decision of the presiding magistrate.

In effect, section 121 empowers the AG to veto the granting of bail to any accused person and accords him the power to prevent the release of a person who has been granted bail for seven days within which period he may or may not file an appeal. Subsequent to this, the AG duly filed an appeal in the High Court (Bulawayo) against the magistrate’s decision to grant bail. The AG appealed on the following grounds:

a) That the magistrate had erred in not giving sufficient weight to the fact that the accused persons “know the source of the CDs in question. Their release would result in further production and distribution of the material, which is the foundation of all 3 counts”.

b) The magistrate erred “by not imposing/attaching any other condition to the bail thereby (sic) the respondents are at liberty to abscond, interfere, with witnesses and commit similar offences”.

Fadzai, Molly, and Gilbert stand accused of knowingly failing to give notice of a gathering in terms of section 25 of the Public Order and Security Act (POSA); participating in a gathering with intent to promote public violence, breaches of the peace, or bigotry; and, alternatively, undermining the authority of or insulting the President in terms sections 33 and 37 of Criminal Law (Codification and Reform) Act (the “Criminal Law Code”) respectively. Charges against the three arose after they facilitated a civic education workshop aimed at promoting public information rights in Gwanda on November 24th, 2011.

After hearing legal arguments in respect of the AG’s appeal on December 16th, Justice Mathonsi of the Bulawayo High Court dismissed the appeal and ruled that the

Noting further that the grounds of appeal “are legendary by their lack of merit”, the court found it “unacceptable for any representative of the Attorney General to shoot up the moment bail is pronounced and invoke section 121 without applying his/her mind to the basis to such invocation”

magistrate’s decision to admit Fadzai, Molly and Gilbert to bail in the amount of US\$50 should stand. In coming to this conclusion, the Judge gave the following reasons:

a) The penalty for breaching section 25 of POSA is a fine not exceeding level 12 (US\$2,000) or imprisonment for a period not exceeding one year or both. The penalty for breaching section 37 of the Criminal Law Code is a fine not exceeding level 10 (US\$700) or imprisonment for five years or both. That of contravening section 33 of the Criminal Law Code is a fine not exceeding level 6 (US\$300) or imprisonment for a period not exceeding one year or both. The Judge considered it an obvious and trite legal principle that “where a statute provides for a penalty of a fine and an alternative penalty of imprisonment, the sentencing court must give effect to the fine first. Imprisonment is always reserved for extremely serious breaches or repeat offenders”.

The judge noted that, in granting bail, the magistrates’ court was awake to this legal principle and the penalty likely to be visited upon Fadzai, Molly and Gilbert if convicted. On this score, therefore, Justice Mathonsi concluded

that “where a bail applicant is likely to be sentenced to a fine, any risk of abscondment is completely non-existent”.

b) The AG’s concern that Fadzai, Molly and Gilbert were likely to commit further offenses if granted bail was completely unsubstantiated and not based on any evidence or fact, and the court could not rely on the prosecutor’s mere say-so or mere suspicion in this regard.

c) The AG’s fear that Fadzai, Molly and Gilbert would interfere with witnesses was found to be without any merit as statements had been recorded from all relevant witnesses and investigations completed by the time Fadzai, Molly and Gilbert were taken to court for initial remand.

The High Court judge concluded that the grounds of appeal were “spectacularly without merit”. It was noted that “to the extent that [section 121] interferes with the liberty of a person who has been admitted to bail, that discretion should be exercised judiciously because the Legislature, in its wisdom, entrusted the [Attorney General] with huge powers”. Noting further that the grounds of appeal “are legendary by their lack of merit”, the court

found it “unacceptable for any representative of the Attorney General to shoot up the moment bail is pronounced and invoke section 121 without applying his/her mind to the basis to such invocation”.

Finally, the High Court made the following observation which is worth quoting in full: The abuse of section 121 to keep persons in custody who have been granted bail has tended to bring the administration of justice into disrepute. It must be discouraged by all means and the time has come to announce to law officers prosecuting on behalf of the Attorney General that section 121 should be invoked only in those situations where there is merit in the appeal...persons who have been properly granted bail should not be kept in custody merely as a way of punishment. That is an improper exercise in the discretion given to the Attorney General by section 121.

LATEST NEWS

As a result of Justice Mathonsi’s ruling, Fadzai, Molly and Gilbert were released from custody later that day (Friday December 16th). Since then, they appeared again before Gwanda magistrates’ court on January 5th and were again remanded out of custody on the same bail conditions originally granted, to January 19th.

Over the Christmas holiday, MMPZ’s Coordinator, Andrew Moyse, was also summoned to present himself to the Law and Order department at Gwanda police station “to assist with their inquiries” regarding the same case. He complied with the request and was subsequently charged under section 33 (2) (a) of the Criminal Law Code, which relates to undermining the authority of the President. However, he was not detained and the police advised him they would proceed by way of summons.

This statement was produced by the Media Monitoring Project Zimbabwe, 9 Knight Bruce Road, Milton Park, Harare, Tel: 263 4 741816 / 778115, E-mail: monitors@mmpz.org.zw

2012: A test for Zimbabwe’s Judiciary and Legal Profession

Zimbabwe Lawyers for Human Rights (ZLHR) takes note of the speech delivered by the Deputy Chief Justice, the Honourable Mr. Justice Luke Malaba, at the opening of the 2012 Legal Year in Harare on Monday 9 January 2012.

ZLHR welcomes recent positive developments which will hopefully improve the efficiency and effectiveness of the judiciary, including the adoption by the Judicial Service Commission of its 5-year strategic plan, and the adoption of a Code of Ethics for the judiciary in Zimbabwe on 2 December 2011.

We trust that these two critical documents will be made public as soon as possible – particularly the Code of Ethics – in order to facilitate greater transparency and accountability of the judiciary and increase public confidence in the justice delivery system by providing clear mechanisms and channels for scrutiny of judicial conduct. ZLHR particularly notes the positive work rate prevailing in the High Court in Bulawayo. However the statistics provided in relation to disposal rates of cases in other courts – particularly in the High Court in Harare – must be as serious a cause for concern to all legal practitioners, as they are to the Honourable Deputy Chief Justice himself.

ZLHR believes that there is need for greater scrutiny of, and reflection on, the

causes of the backlogs and low disposal rates of cases. There is urgent need for a multi-stakeholder approach to address the current challenges facing various courts around the country if efforts to improve justice delivery are to be credible. In this regard, we cautiously welcome the idea of committees mooted by the Deputy Chief Justice to meet regularly and discuss and deal with such challenges, although we would wish to see it opened up further to include other stakeholders who can make informed input and recommendations for remedial action.

Without opening meaningful debate and accepting input from the legal profession and law-based organisations whose members are well aware of the challenges and have ideas on how these can be addressed, we cannot hope to improve the administration of justice any time soon.

ZLHR is of the considered view that it is time for the judiciary and the legal profession in Zimbabwe to move with the times in terms of modern techniques of dispute resolution, as well as the use of modern technology in relation to case management. These, amongst other methods, can and should be considered as additional means to address these challenges, as indicated by the Deputy Chief Justice.

In addition, a move towards strengthening the functions and powers of the court Registries will improve



The Supreme Court of Zimbabwe.-internet photo

administration and free judges to spend more time attending court and considering and finalizing their judgments.

In what is likely to be a watershed year for the country, and in view of the increased rights abuses on the general public, it is critical for the judiciary and the legal profession to ensure that such issues are urgently addressed in order for this arm of government to effectively carry out its mandate of protecting the rights of all Zimbabweans without fear or favour, in a timely manner,

with professionalism, transparency and accountability. Only in this way will there be improved public confidence in the justice delivery system and ensure that justice is not only done, but is also seen to be done.

From the Zimbabwe Lawyers for Human Rights. Access: http://www.zlhr.org.zw/index.php?option=com_content&task=view&id=43&Itemid=84

Zim’s Year of ‘Politicized Deception’?

From Front Page

distribution of resources either via the YouthFund or the community trusts that are being established via the indigenization programme. In both, there will be the cajoling of party supporters to tow the official party line on all issues as well to try and make sure that party supporters get a piece of the economic pie. In short, it will be a political party fest that will seek to undertake, on behalf of itself, the continuation of a partisan but non-people centered political narrative in Zimbabwe.

It is for this reason that 2012 will be characterized by a number of specific events that are easy to predict. The first such event is that there will be another big political dispute next year over the issue of elections which will once again involve SADC. As in March 2011, the parties will try and influence SADC on the matter of the election roadmap, security sector reform and sanctions.

In doing so, the end result will be similar to the Livingstone SADC Troika Summit whose resolutions ended up being disputed as well as unimplemented. At best however SADC will probably seek a compromise that will lead to the holding elections at end of the five year term of Parliament, which is 2013.

In the midst of the SADC lobbying, the political parties are going to continue arguing about the contents of the Parliamentary Select Committee (COPAC) draft constitution. Whoever wins on the contentious issues of the same draft will also take comfort in the knowledge that all of the member parties to COPAC will still campaign for a ‘yes’ vote to the draft in order to save face and to continue with the contested argument that the whole process was ‘people-driven’.

There shall be a well funded ‘yes’ vote campaign that will be used to test the electoral waters by the three antagonists in the inclusive government. Whatever the result of the referendum, it will be used more for partisan political



WHAT WILL THE REGION SAY: Many Zimbabweans will be listening closely to how regional bodies like SADC and the AU will respond to calls for elections in Zimbabwe.-zimbabweinpictures.com

interests than for broad national legitimizing of the supreme law of the land.

There shall also be serious political competition as to issues of ‘economic development’ or community economic beneficiation by the three political parties particularly due to the establishment of the various support funds to the youth, small scale business, ‘rural women’. A number of projects will be competed over and the youth ministry will be at the forefront of the greater majority of them in what will be a concerted effort to lure young peoples’ votes.

The national economy will continue to be characterized by the dictum, ‘avail-

ability of goods (foreign) and services without accessibility’ for the majority of our country’s citizens. While social services will become more expensive due to the lack of a central government plan to avail these consistently and to all.

The safety and security of citizens will continue to be under threat from repressive laws and security forces habits that inhibit the enjoyment of particularly freedoms of assembly, association and expression. So as it is, 2012 is a year in which our political leaders will appear as though they are very busy trying to resolve national problems when in

fact they are resolving their own.

It is up to the people of Zimbabwe to seek to bring them to account on concrete matters that cover the broad spectrum of challenges the country is facing. In doing so, we must be wary of being co-opted into false realities that appear urgent when instead they are the stuff of momentary political flashes in the pan.

By Takura Zhangazha, a political and social commentator. This article can be accessed at <http://takura-zhangazha.blogspot.com/2011/12/2012-zimbabwes-year-of-politicized.html>