

ZIMBABWE BRIEFING

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Its Official, Zimbabwe Security Sector Enters Politics- Dialogue on Zimbabwe's Future Outside the GPA Now as Urgent as Ever:

Last week this publication talked about the dangers of the insidious workings of the security sector to take over ZANU PF and dictate the pace, conduct and influence the results of the proposed general election. There have been many complaints from senior ZANU PF officials that they are being hounded out of their positions by men and women in uniform. The security sector had by then not said or openly done anything to clearly demonstrate its intentions and some stories were largely taken as rumors. This takeover is however no longer a secret and is being done in the open. In the past week serving senior military, intelligence and police officers have been visiting various provinces organising ZANU PF meetings in an attempt to restore order following disastrous and fractious internal party elections. In Manicaland senior Military officials led by Generals and Police Commissioners convened a ZANU PF meeting where they whipped bickering party supporters into line. Similar meetings are said to have taken place in Masvingo and others parts of Zimbabwe. The question asked last week, remains relevant, what are the implications for Zimbabwe in light of the new constitution drafting process, the anticipated referendum and elections?

It is no longer a question of speculation that Zimbabwe is not ready for a free and fair election be it in 2012 or 2013 as a result of developments in ZANU PF that has wider implications on the political environment. As the military fights to take over ZANU PF they will equally be suppressing other parties and civil society. Just this weekend an MDC rally was disrupted by the police in Harare. The question on the role of the security sector in politics or the necessary but unwanted demand for security sector reform is now the only matter that need redress before Zimbabwe even start talking of a new constitution, more so a general election. The Generals and Senior Police officers who descended on Mani-

caland are said to have made it clear that they are concerned about their future, that while the politicians have friends in the region and internationally, they have no other home other than Zimbabwe. The maintenance of ZANU

the victims and perpetrators feel confident and accepted. The danger to Zimbabwe now is that the armed wing of society, feels threatened and essentially preparing for war. The question that civil society and political parties out-



Augustine Chihuri, Police Commissioner General [from right] Constantine Chiwenga, Zimbabwe Defence Forces Commander, Perence Shiri, Commander of Air Forces of Zimbabwe and Paradzai Zimondi, Prisons Commissioner General Photo: AP

PF political hegemony by any means necessarily is the last action and last option that remains for the security sector. In this regard civil society and the democratic political sector need to contemplate, plan and act on removing the fear factor that pervades Zimbabwe's security sector.

The security sector has come out in the open that they do not trust a process of change underway in Zimbabwe and which they are struggling to halt, out of fear. They see no future for them in a democratic Zimbabwe apart from the small prison cells at Chikurubi Maximum prison. In this regard civil society and political players outside ZANU PF need a plan and a message that focuses on not only political transition, but also national reconciliation in which both

side ZANU PF must ask themselves is whether confrontation is in the best interest of Zimbabwe, what is it that victims of political repression and what is it that perpetrators want and how can the conflicting agendas be narrowed for the benefit of all?. That discourse need to start now both openly and in private with those concerned. It no longer means much for us to expend energy writing that the security sector is taking over ZANU PF and preparing for a war of an election. Rather those in position to start national discussion on these matters need to start talking now. It will not help our situation to allow the political polarisation witnessed in 2008 repeat itself as the gains made in the past 2 years, however minimal, will be wiped out and Zimbabwe possibly done with.

The question that faces Zimbabwe civil society now is what to do with the visible fear in the security sector and how do we prepare a soft political landing for Zimbabwe under these circumstances. The security sector feels abandoned by ZANU PF politicians hence their actions to control and manage the politics while still in uniform. The security sector has been used and abused by the ZANU PF political leadership hence the internal wars in ZANU PF, an attempt to takeover and safeguard their interests. It is not enough to say the leadership of the security sector has no support of the rank and file of the military and police, as the few, as long as armed remain dangerous. Serious work has to start now to emolliate the danger that Zimbabwe faces by dialogue and sending the right signals that there is room for dialogue and that elections, if ever held are not a zero sum game. In the circumstances it is imperative for civil society to highlight the naked truth that Zimbabwe whether with an agreed and perfect constitution is not ready for an election but needs deep and frank dialogue. This is so because as a society there is no agreement on what an election means to us. For the security sector it is simply a process of legitimising their takeover, yet for citizens it should be a genuine and legitimate process of installing a government of the people. The coercive balance of power remains with the security sector, while the moral and legal high ground remains with citizens. There is need for security sector reform and dialogue before we proceed with anything that resembles an election. And this is the urgent message and action of our time.

By David Mutomba

SOUTH AFRICAN HIGH COURT ORDERS S A AUTHORITIES TO INVESTIGATE CRIMES AGAINST HUMANITY COMMITTED IN ZIMBABWE SALC

JOHANNESBURG – In a landmark decision for local and international justice, the North Gauteng High Court ruled this morning the 8th of May that the South African authorities must investigate Zimbabwean officials, who are accused of involvement in torture and crimes against humanity in Zimbabwe.

"This judgment will send a shiver down the spines of Zimbabwean officials who believed that they would never be held to account for their crimes but now face investigation by the South African authorities," said Nicole Fritz, Executive Director of the Southern Africa Litigation Centre (SALC), which brought the case along with the Zimbabwean Exiles Forum (ZEF).

In a very strong ruling, Judge Hans

Fabricius said that the National Prosecuting Authority (NPA) and the South African Police Services (SAPS) had acted unconstitutionally and unlawfully in not taking forward the original investigation. His judgment also underlined in the strongest terms South Africa's obligations under international law.

"This decision is not just about Zimbabwe, it also sets a much broader precedent by ruling that South African authorities have a duty to investigate international crimes wherever they take place," said Fritz. "It is a major step forward for international criminal justice."

In March 2012, SALC and ZEF argued in the High Court that the deci-

sion of the NPA and SAPS not to investigate Zimbabwean officials linked to acts of state-sanctioned torture should be set aside. Brought in terms of South Africa's International Criminal Court Act, which defines torture as a crime against humanity, the applicants' argued that the NPA and SAPS had failed to take into account South Africa's international and domestic law obligations to investigate and prosecute perpetrators of international crimes regardless of where they are committed or by whom.

The case highlighted South Africa's duty to investigate crimes against humanity, the sufficiency of the evidence presented by SALC to the NPA and SAPS to trigger an investigation and how irrelevant considerations – such

as political concerns – improperly influenced the decision. The case also exposed divisions within the NPA after Anton Ackermann, the head of the Priority Crimes Litigation Unit that is responsible for the investigation and prosecution of international crimes, stated in an affidavit that he believed that an investigation should have been initiated and that he was not satisfied with the manner in which SALC's request was dealt with.

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Sinister, Futile Attempt to Delink New Constitution From Next Elections

Coordinator's Note 73



dewaMavhinga

Last week the Constitution Select Committee (COPAC) comprising parliamentary representatives from Zanu PF and the two MDC formations produced a first draft of the constitution and presented it to the Management Committee overseeing the process for eventual submission to president Mugabe, Prime Minister Tsvangirai and Deputy Prime Minister Mutambara. Such progress has shocked and galvanized elements within Zanu PF who appear to have found a willing spokesperson in professor Jonathan Moyo to move to separate the constitution-making process to the next elections.

Earlier this week rumour circulated that Zanu PF had pulled out of COPAC, but COPAC chairperson Douglas Mwonzora (MDC-T) and Paul Mangwana (Zanu PF) denied it. Writing for the Sunday Mail this week, professor Jonathan Moyo opined, “ It is now absolutely necessary for the Copac constitution and the forthcoming elections to be delinked because the two should not have been linked in the first place. If the delink is not done, then our country should brace up for a phase of certain instability.” Having failed to stop the constitutional reform process, the usual detractors are now pushing for a new constitution that will not be relevant to the manner in which the next elections will be run.

In other words, this small, peripheral but vocal group wants a new constitution that does not make part of the roadmap to credible, free and fair elections. It appears there is a general, well-founded fear, that any reforms, no matter how mini-

mal, would raise public confidence that change is possible and lead to overwhelming support for change during the next elections. Some of the reforms proposed in the draft constitution which are likely to upset key beneficiaries of Zanu PF’s patronage system over the last three decades include the stripping of the Attorney General of all prosecuting authority because of the establishment of an independent National Prosecution Authority; the establishment of a Constitutional Court; the imposition of strict two term limits on security chiefs for the police, prison services (to be called correctional services) and the army.

Some provisions in the draft constitution put Zanu PF on the horns of a dilemma. For instance, the devolution proposal, so much dear to the people marginalised people of Midlands and Matebeleland, is clearly not coming from Zanu PF, and therefore if it becomes part of the new constitution all credit will go to those political parties championing it. It will become a rallying cry for support ahead of elections. On the other hand, if Zanu PF blocks devolution in the new constitution, it can be assured it will not get any support in those provinces championing devolution. Therefore, the proposed solution would be to shelve the constitution altogether so that fresh elections are held outside of these difficult issues.

The COPAC team has put transitional provisions in the draft constitution indicating that while the bulk of the new constitution will only take effect after the next elections and once the new president elected

under the constitution takes oath of office, while all provisions relating to elections will come into force as soon as the new constitution is approved and gazetted.

Professor Moyo then makes the incredible claim that “the GPA [Global Plotical Agreement] does not require at all that the next elections should be held under a new constitution.” The whole idea of the GPA was to create conditions and a viable environment under which free and fair elections can be held under a level political field and in the absence of violence or intimidation. The writing of a new constitution incorporating key institutional and legislative reforms therefore became a key benchmark in the roadmap to credible elections. Perhaps what professor Moyo really wanted to say is that his particular faction in Zanu PF is not favoured by the holding of elections after a new constitution has been agreed to.

At first it would appear strange that Zanu PF, which has senior representatives in COPAC, and who bussed scores of their supporters to parrot particular views during the constitutional outreach phase, should now turn around and call for either the dismissal of the entire constitutional reform process or delinking the process from next elections. But closer scrutiny reveals deep factional fights within Zanu PF and attempts by various groups to position their candidate to succeed Mugabe. It appears a group comprising of the securocrats, and for whom professor Jonathan Moyo is acting as unofficial spokesperson, stands to benefit from having elections under the

current Lancaster House constitution in the absence of far-reaching reforms. This same group is interested in early elections with Mugabe as Zanu PF candidate with the vain hope that, following an imagined victory at the polls, this group would be credited with victory with their candidate being nominated as successor.

On the other hand, there are some within Zanu PF who are convinced that constitutional reform is essential to creating a viable, permanent, sustainable and nationally acceptable solution to the Zimbabwe situation. It is generally accepted that this group is the one led by the vice president Joyce Mujuru. For this group their succession plan does not necessarily rely on Mugabe hand-picking their candidate as successor, but on wide political support within the party which guarantees their candidate victory in the event that the party is left to decide its next leader.

It is now clear that the writing of a new constitution is not just a site of struggle for different political parties, but more so for different factions within Zanu PF. It is also clear that this desperate, sinister attempt to delink the writing of a new constitution from elections is futile because it is simply too late now to begin to throw spanners in the works. It is telling that only last week president Mugabe, while addressing mourners at the burial of Zanu PF national hero, Edson Ncube, conceded that the next elections will be on the basis of a new constitution.

Dewa Mavhinga, Regional Coordinator, Crisis in Zimbabwe Coalition

UPCOMING EVENTS

(i) Zimbabwe Re-engagement Team visits the EU 10 May to discuss sanctions, among other issues,

(ii) The UN High Commissioner for Human Rights to visit Zimbabwe, including Marange diamond fields from 20 May

The Making of a New Constitution in Zimbabwe: Some Observations

It has become quite clear from the three decades after the decolonisation of Zimbabwe that a new people-driven constitution was one of the vital missing links in the democratisation struggle. The negotiated and indeed compromised Lancaster House document is, to a significant extent, responsible for the governance challenges that confront the southern African country today. The link between good governance and a Constitution is extremely strong such that the opportunity that arose for the writing of a new one roughly 2 years ago had to be utilised, and utilised well. It is therefore a tragedy that the process has been marred with unending controversy, but most worryingly, attempts by some sections of the body politic to even disable it.

One of the tragedies of the fledgling democracy that is Zimbabwe has been the severe politicisation of civil processes. A constitution is a salient document which should serve nobody’s narrow interests but an entire nation’s. Given the diversity of the Zimbabwe nation with all the different ethnicities, interests and aspirations, respecting the views of the generality of the population is a minimum requirement. Sadly, the tendency has been for some politicians to defeat the whole idea of a new Constitution albeit at the altar of criticism. Whilst criticism is fair and of course necessary in such sensitive a national process with serious consequences for national development, emerging has been a trend where political incumbents have exhibited evil intentions towards the birth of a new constitution. This does not augur well for a country that obviously needs and deserves a new constitution. To therefore expand energy on attacking the process, rather than suggesting ways of doing it better, is indicative of a very sick, unpatriotic tendency that afflicts some minds whose machinations are halting Zimbabwe’s progress.

The failure of the 1999 Constitution making process to usher in a new Constitution for the country must have provided lessons for any such future endeavour. Sadly, this does not seem



to have been the case. One of the most ignored, yet significant factors about Zimbabweans civic participation in national processes is that there is little political literacy among many citizens. Of course this is worse in rural areas some of which are blighted by lack of broadcasting services coverage and remoteness to the extent that the level of information asymmetry is shocking.

When taken together with the severe curtailment of civil society activities in attempts at political education and general information dissemination, what you have is a citizenry that is scarcely knowledgeable to make a significant impact in some of these processes, including voting itself. One would therefore have expected a vibrant awareness campaign to arouse people to the importance of a constitution before views on making one were gathered.

The current GPA induced environment

where there has been some degree of opening up of political space would have been a great opportunity for that. Far from denigrating some Zimbabweans, the truth of the matter is that an informed citizenry would contribute

more meaningfully to a better constitution than a less informed one. A lot of criticism has been levelled against the Constitution Select Committee (COPAC). Chief among them has been the outrageous claims that somewhere along the way, it ignored and set aside people’s views. Further, the script also goes on to say members there then smuggled into the Draft, certain provisions of their own making. That would be very devastating and make the whole process a joke. More crucially, it would be a waste of taxpayers’ money and indeed precious national time. For a country so constantly claiming bankruptcy, it would be a total insult if these allegations were to be proven. Be that as it may, one is however invited to query these damaging accusations precisely because of the aforementioned orchestrated campaign to throw all sorts of spanners into the COPAC works and render it a nullity. Exactly how did some people know of ‘smuggled’ is-

sues into a draft that was not yet made public? The onslaught against COPAC has all the hallmarks of a sinister plot to unfairly judge it so that some sections of the political spectrum avoid a new constitution by whatever means. It would be a tragedy if such plotters were to have their day in the sun.

In short, Zimbabwe needs to rid itself of self-destructive tendencies which serve no other purpose other than to perpetrate what is clearly a governance challenge.

It is important to note that a new Constitution is not an end in itself but a means to an end because it can only function well if it is accompanied by constitutionalism itself. For it is one thing to have a Constitution, and quite another to have it religiously adhered to. This in other words may simply refer to the rule of law. Giovanni Sartori defines liberal constitutionalism as constituting the following elements: (1) there is a higher law, either written or unwritten, called constitution; (2) there is judicial review; (3) there is an independent judiciary comprised of independent judges dedicated to legal reasoning; (4) possibly, there is due process of law; and, most basically, (5) there is a binding procedure establishing the method of law-making which remains an effective brake on the bare-will conception of law (Sartori, 1987, p. 309). The past three decades have proven beyond any reasonable doubt that constitutionalism faces a lot of hurdles in Zimbabwe. Hopefully, the new constitution to be borne out of the COPAC effort provides for stronger tenets of constitutionalism.

Edson Ziso is student of Public Policy .

Inbrief Around Zimbabwe

Ditshwanelo Human Rights Film Festival

Ditshwanelo, a Botswana Civil Society organization is hosting the 12th Human Rights Festival in Gaborone. Three films on Zimbabwe have been shown at the festival with the aim of exposing the human rights situation in Zimbabwe. A State of Shame: Politically motivated rape by Research and Advocate Unit, Zimbabwe, Zimbabwe’s Forgotten Children by Jezza Neumann and Robert Mugabe, What Happened by Simon Bright were shown at the festival. The Festival provides a platform for debating and discussing human rights issues by facilitating discussions after the films. Crisis in Zimbabwe Coalition co-hosted two of the films.

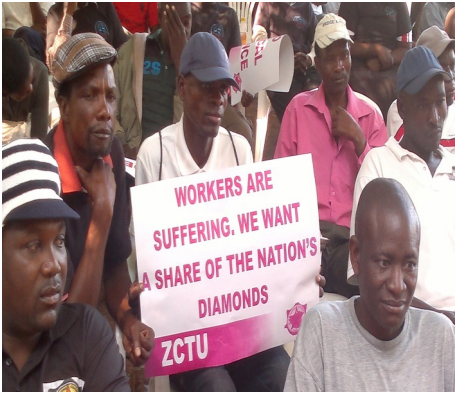
Visit by UN Human Rights Commissioner

The United Nations Human Rights Commissioner, Navi Pillay is set for a five day visit to Zimbabwe starting on the 20th on May. Her visit will be on an invitation from the Government of Zimbabwe. we call upon the UN High Commissioner to (a) press for credible, free and fair elections held after a new constitution has been finalized & (b) press for the establishment of a UN

Human Rights Monitoring Office in Zimbabwe reporting directly to OHCHR

Intensification of Politically Motivated Violence

Political violence and intimidation is intensifying as the country draws clos-



ZCTU members on the celebration of workers day in Harare 1st of May 2012 in Harare Gardens

er to elections. Soldiers disrupted an MDC rally in Kambuzuma, a high density suburb in Harare. In another Harare suburb, Highfields, militants violently attacked and injured six MDC-T members and destroyed three houses. The victims have been hospitalized.

Constitution Making Process

The process is being stalled by ZANU PF which keeps demanding more time to study the document. Other stakeholders like the rival MDC factions have provided feedback. ZANU PF is divided over the draft constitution with hardliners like Jonathan Moyo dismissing the draft document preferring elections to be held under the Lancaster House constitution.

Involvement of military in politics confirmed

The Chief of Staff, Major General Martin Chedondo said soldiers should be involved in national politics. Addressing over 3 000 troops from 2 Brigade undergoing a battlefield training exercise in Mutoko, the General confuses the constitutional mandate of the military to protect the integrity of the country and citizens as the reason to be involved in politics. He defended the military’s support to Zanu pf.

Zimbabwe Schools Open

Zimbabwe schools opened amid reports of school fees hikes and teachers threatening industrial action. Teachers are earing a paltry net salary of 180USD per month whilst the poverty

datum line stands at 500USD. Some are reportedly running parallel schools to augment their salaries. Zimbabweans, like teachers, should be benefiting from diamond revenue but its disappearing into thin air.

European Union (EU) to engage Zimbabwe Ministers

EU Foreign Policy Chief Catherine Ashton is to meet on Thursday in Brussels with three ministers from Zimbabwe to discuss political reforms and sanctions.

ZANU PF through Chinamasa expressed its hope that the talks will lead to the unconditional removal of sanctions. The visit comes at a time when ZANU PF has indicated that they will not allow the EU to send election observers into Zimbabwe for the presidential elections.

We urge the EU to link the gradual suspension of targeted measures to clear progress towards the holding of free and fair elections and to insist that the international community, including the EU, be allowed to freely monitor Zimbabwe's next elections.

Harmonise Zimbabwe's marriage laws before changing marriage certificates

IN the latter half of 2011 government through the ministry of Justice and legal affairs announced that it was making moves to harmonise Zimbabwe's long criticised marriage laws. This would see every Zimbabwean marriage being recognised under one act and the same rights and limitations being applied to all marriages by the proposed law. Zimbabwe's law currently recognises three kinds of unions, the civil marriage, the registered customary marriage and the unregistered customary union and these have brought more confusion than the freedom of choice to users.

In its move to review these laws the ministry stated that research was being conducted in selected districts of Zimbabwe to determine the type of marriages prevalent in Zimbabwe and identify the challenges which communities face in registering marriages. While the results of this research are yet to be revealed, one is compelled to assume that the unregistered customary unions may top the list. This presumption rises from the fact that civil and registered unions can only be solemnised by state registered marriage officers and these are not always available in the remote parts of Zimbabwe where the majority of the population resides. Also judging from the number of legal disputes over property rights, inheritance and estates of deceased persons, it is possible that a great number of married people may not be married under the civil union or may simply not understand their rights under these laws.

Furthermore, according to the Development Centre's Social Institutions and Gender index, more than 80 percent of Zimbabwe's rural households are counted among the unregistered customary marriages. It is quite interesting though that the Registrar General's (RG) office has moved faster to amend its civil marriage procedures than the ministry of Justice and Legal Affairs to harmonising marriage laws. Recently the RG's office halted civil marriages countrywide to make way for a new system of registering marriages and a marriage certificate with special security features. Many have lauded the move stating that it will protect citizens intending to get married especially to foreign nationals and women who have often fallen prey to con artists.

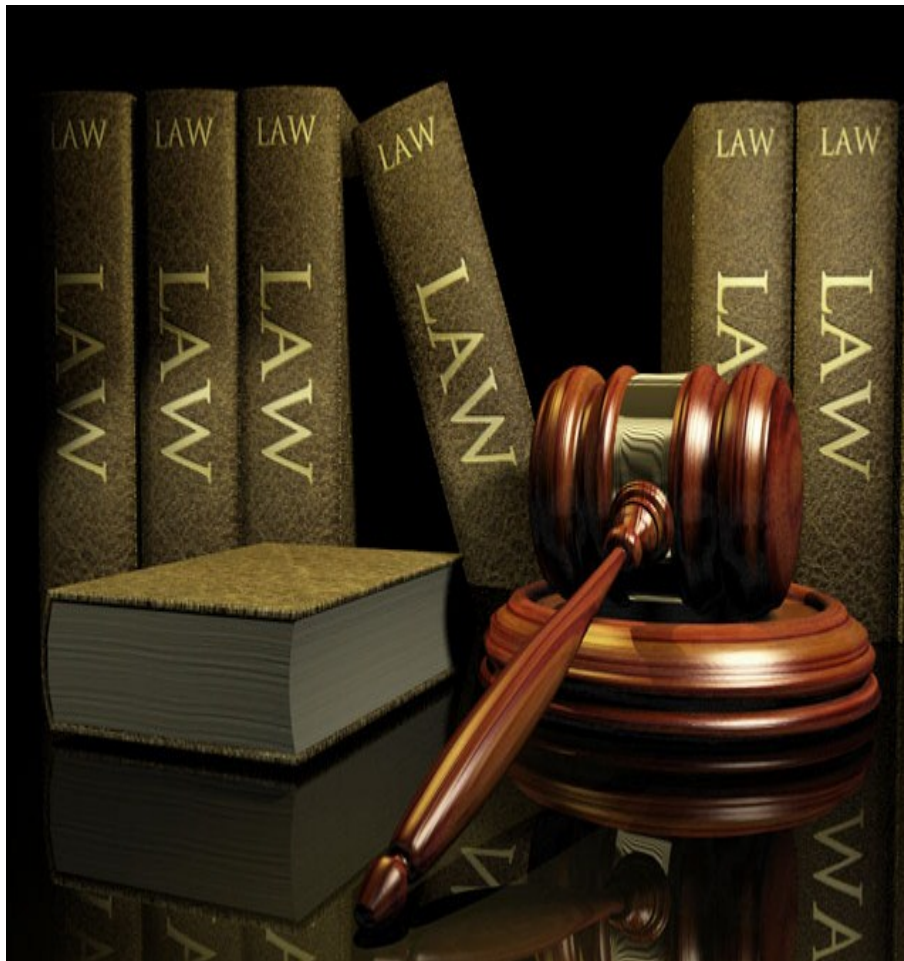
The new procedure requires those intending to marry to submit their full names and identity particulars plus passport size photographs and thumb finger prints on the day of the wedding. The witnesses to the union also need to give their full names and identification details. In the case of foreign nationals wishing to marry Zimbabweans, they need to produce a police clearance document absolving them of any past criminal activity or conviction in their home country. This will in no doubt compel couples to take time to think about the process and their need for marrying before they say the "I dos", but may not necessarily reduce the number of marriages of convenience and the union of locals to ex-convicts from other countries.

In the last decade an influx of foreigners marrying local women and men for the convenience of gaining citizenship

and easy access to local business opportunities has made ordinary citizens and leaders wary of the laxity marriage laws. This has seen many being taken advantage of or even losing their property when their spouses for example

estate disputes faster than if people were just living together without officialising the relationship.

Despite the many efforts government is making to ensure protection of peo-



ple choose to move to another country. Zimbabwe's rigid citizenship laws also have the potential to negatively affect those, especially women, in transnational unions as battles of who gains custody of the children in cases of divorce or relocation may arise.

The RG's explanation that police clearance letters will help reduce unions with former criminals, places the

ple getting married, this protection does not seem to be filtering through to the marriage institution itself as some marriage laws still recognised in the country still men more power than women in a relationship. For example, under the registered customary marriage laws a woman cannot inherit her late husband's estate ahead of his male kinsmen. This law also allows a man to take more than one wife and consid-

Given these new requirements for formalising marriage, some couples may end up choosing to remain unmarried or use the unregistered customary marriage laws which could turn out to be more problematic. Clearly these new changes show just how discriminatory Zimbabwe's marriage laws are because the civil union has once again been fortified while the registered and unregistered customary unions remain open to abuse.

need to 'protect' citizens directly above one's freedom to choose whom they want to marry. While little explanation has been given as to what re-prieve ex-convicts have to marry a Zimbabwean, the RG's office is in a way limiting Zimbabweans' choices on who to settle down with. Locals may not decidedly chose to marry someone who has a criminal record no matter how rehabilitated they maybe because of the fear that he or she may not be allowed to marry them.

Given these new requirements for formalising marriage, some couples may end up choosing to remain unmarried or use the unregistered customary marriage laws which could turn out to be more problematic. Clearly these new changes show just how discriminatory Zimbabwe's marriage laws are because the civil union has once again been fortified while the registered and unregistered customary unions remain open to abuse. A formalised marriage does not only offer psychological protection, but also the protection of property as one knows that whatever is purchased while they are in that union will be recognised as belonging to both parties. It also helps protect the rights of the surviving spouse in the case of death as it will help settle any

ers the man to be legal guardian of the children over his wife. The RG's office and involved ministries must consider that the extra security features on the marriage certificate will not protect women from the challenges they face once they get into these union because of the skewed and somewhat insensitive laws that still prevail. In this regard, the RG's office cannot be seen as doing anything else other than practicing double standards when it claims it is protecting people going into marriages.

As a recommendation, the RG's office may consider ensuring first that benefits from all types of marriages, as long as they are registered with the Government of Zimbabwe, are similar. For instance, for areas that are too far away from magistrates courts or have no marriage officers nearby, certificates of marriage must be obtainable from the nearest government offices to officialise unregistered customary marriages. It is not a secret that in African culture, even those that sign the marriage register and those that hold white weddings first pay some form of dowry. Why then deny those that have paid dowry only, the opportunity to officialise their unions if that, in their culture, is recognition enough of mar-

riage. Does the RG's office then only view marriage to have taken place if the vows have been made before a judicial officer or a church official registered with government? If so let requirements be made for all people who consider themselves married to sign some form of register and for these registered to be readily available in all government centres.

So far only women have the incentive to have their marriages officialised otherwise men tend to benefit more from the unregistered marriages and this causes a lot of problems for women. This is mostly due to the fact that a man may claim full marriage rights (conjugal and otherwise) from a woman by simply paying dowry to the woman's family, however the performance of these duties by a woman in an unregistered customary marriage may not be enough for her to claim half the property acquired during the union upon divorce or death of the spouse. To the legal system in Zimbabwe, payment of lobola remains misleading to many women who still lose out even when they know that according to culture their union is valid. The government may incentivise the registration of marriages for men by ensuring that they are for example guaranteed some form of spousal support from the working ex-wife in case of divorce or that they cannot contest the support of an ex-wife and children if the marriage was not registered. As things stand currently, families remain unprotected despite the cosmetic changes currently taking place in the sphere of marriage laws.

According to the Development Centre Social Institutions and Gender index, more than three-quarters of the Zimbabwe's population; about one in ten women live in polygamous unions. Such marriages are three times more frequent in rural communities than in urban areas, and the incidence is lower among women who have a secondary education. There is therefore a need for the recognition of payment of lobola as formalisation of marriage at a certain level to cater for the huge number of people still using customary guidance for marriage.

The rules must be as binding to those that make this commitment before their families as those who make it before a registered marriage officer of the law. This may need certain requirements to be met first for example the legal age for marriage to be 18 for both males and females (currently men can marry at 18 and girls at 16), it could also be a requirement for witnesses to sign a certain agreement to show that the two partners entered the union willingly to deter from early and forced unions. It is hence not enough for government to introduce stringent marriage conditions to laws that have always protected women without first making an effort to improve on the laws that continue to keep women undermined in marriage like the registered and unregistered customary marriages. It is time government acted to harmonise all marriage laws in the country.

By Sibusisiwe Ndlovu - Bhebhe, the Gender officer at Bulawayo progressive Residents Association (BPRA). She writes in her personal capacity and can be contacted on busisiwe75@gmail.com

COPAC DRAFT CONSTITUTION: CITIZENS ARE NOT SUBJECTS

The un-imaginative capacities of our nation bearers to see beyond narrow and petty political party horizons amazes. The recently published COPAC draft constitution seeks to disenfranchise a huge section of the Zimbabwean community that was driven outside the country by reasons not of their own making. In short the constitution prohibits against dual citizenship and at the same time does not allow for a Diaspora vote. Technically this means continued exclusion of a large community of Zimbabweans estimated at roughly 4 million. Are we seeing the triumph of Didymus Mutasa's dream of 2002 of a Zimbabwe without other Zimbabweans; "We would be better off with only six million people, with our own [ruling party] people who supported the liberation struggle. We don't want all these extra people"; or a Zimbabwe of subjects and not citizens as articulated by Mahmood Mamdani in his must read Citizens and Subjects. The quest for electoral democracy cannot be over without half of the population remaining disenfranchised. This treatise will seek to unpack the deficiencies of the COPAC draft and how it undermines in electoral democracy in Zimbabwe.

Past Mistakes

The systematic disenfranchisement of Zimbabweans of their citizenship post 2000 especially those of Malawian, Mozambican, Zambian and any other foreign descent became the hallmark of Mudede's reign as registrar general (if not deregistrar and rigster general). The coining of the words deregistrar and rigster general by the Zimbabwean public highlights the extent of institutional decomposition and public disdain of the registrar general's office. Numerous and spirited litigations were taken against the registrar general and ministry of home affairs and they lost but still Mudede and his coterie's ignored the courts. Zimbabweans are still demanded to go and renounce citizenship of a country that they have never acquired citizenship and as well would have never visited. The basic question is how can you renounce something which you have never been? You renounce that which you are, not; what you are not? A number of citizens have been disenfranchised and remain disenfranchised and still remain. Then there is a huge number of Zimbabweans in the diasporas that have been systematical disenfranchised through (i) displacement by political persecution (ii) forced to seek greener pastures i.e. educational and economic opportunities. This group has been denied participation in the governance and electoral process since there is fear that the majority of these people may not vote favourably for a certain party or politicians. Once again narrow minded and petty party political agenda take precedence over nation building. This is despite that the government has always sought to tap into these people through the failed Reserve Bank of Zimbabwe led Homelink Scheme and of recent the Floated Diaspora Bonds.

COPAC and the Citizenship Question

Interestingly the published COPAC draft fails to address the question of citizenship convincingly and even falls short to equal the current constitution whose citizenship provisions have been heavily discredited. Of interest are the following provisions in chapter

3:

3.2. (2) *An Act of Parliament may limit the effect of subsection (1) on the descendents of Zimbabwean citizens who were born outside Zimbabwe and who acquired their citizenship through persons who were them-*



Douglas Mwonozora, COPAC –Co Chair person[MDC-T]

selves born outside Zimbabwe.

3.3.(1) *Anyone who has been married to a Zimbabwean citizen for at least ten years, whether before or after the effective date, and who satisfies the conditions prescribed by an Act of Parliament, is entitled on application to be registered as a Zimbabwean citizen.*

3.3.(2) *Anyone who has been continuously and lawfully resident in Zimbabwe for at least ten years, whether before or after the effective date, and who satisfies the con-*



Paul Mangwana COPAC Co-Chairperson[Zanu pf]

ditions prescribed by an Act of Parliament, is entitled, on application, to be registered as a Zimbabwean citizen.

3.4.1. (c) *Within five years after becoming a Zimbabwean citizen, the person is convicted of a criminal offence specified in an Act of Parliament.*

3.7. (1) *An Act of Parliament must provide for the establishment of a Citizenship and Immigration*

Board consisting of a chairperson and at least two other members, appointed by the President, to be responsible for—

Given that a majority of Zimbabwean families are living in the Diasporas,

clause 3.2.2 has potential catastrophic ramifications to many Zimbabweans who would want to maintain their citizenship. The provision can be abused by anyone and disenfranchise a number of our citizens for the sole purpose of pursuing narrow political gains that are inimical to nation building and development. Section 3.3.1 prescribes a period of ten years yet in the current constitution we have five years (see Section 2.7.4). The question is what have been the motivations for doubling and not reduction? This fascination with ten years fails to appreciate and comprehend the nature of our society, how it has transformed Zimbabwe from being confined to the geographical boundaries of the Limpopo

and Zambezi rivers. We have Zimbabwe as defined by the geographical margins of Zambezi and Limpopo, and another one made of communities whose heritage and ancestry is rooted in Zimbabwe and are very conscious and committed to their Zimbabweanness but now spread all over the world. Subsection 3.4.1(c) which is not in the current constitution but an addition is very vague and is prone to abuse by politicians. We have cases in point where we lost quite a number of business people and entrepreneurs because of vague laws were abused to pursue narrow political gains. That means if someone would have spent

ten years and maybe in their fifth year commit such an offense as specified in an Act of parliament, he or she would lose his or her citizenship. Imagine a person who may have acquired their citizenship at twenty five or thirty five that would mean a person losing their citizenship in the fortieth or fiftieth year. The failure to define the nature of offence may leave room for abuse, for it simply means that the majority of that day will rule the roost. We have to bear in mind that parliament only needs simple majority or half plus one to make a decision binding and legal. One consistent message that has always come out is the clipping of the powers of the president, but surprisingly subsection 3.7.1 speaks to an immigration board appointed by the president. History has taught us that the current board we have has been dysfunctional and failing to play an independent role. There is need to subject appointment of such people to a National Assembly process approved by a two-thirds majority.

Citizenship and Democracy

The symbiotic and umbilical connection between citizenship and democracy need not more emphasis. The term democracy is of Greek origin made of the following components Demos=People and Krazy=Rule. This translates to rule by the people and no wonder why Abraham Lincoln referred to government by the people for the people, and Rousseau talked of sovereignty lying with the people. Similarly closer home we say "Nyika vanhu" or "Hushe hunoravanwa", which means a country is there because of the people and that leadership/rulership is through consultation. Similarly a country is there because of its citizens and thus we cannot afford the 'we do not need the six million' philosophy advanced by Didymus Mutasa in 2002. It seems this is the philosophy that COPAC has adopted in defining what a citizen in Zimbabwe is. This philosophy is counterproductive because it assumes that unless people agree to be subjects of political parties, then will they be acknowledged but the moment they try to assert their citizenship they are disenfranchised. Citizenship is fundamental to any thriving democratic formation as it allows for people to take stock of their leadership and have a say on the policies and institutions that govern them.

Beyond COPAC Draft.

It is the submission of this paper that Civil Society and the generality of Zimbabweans wherever they are need to mobilise and exert pressure on COPAC. The same way the Political parties are exerting pressures and making positions regarding their entrenched position on the constitution so do Civil Society and the Citizens need to do the same? There is need to mobilise for the Six million Zimbabweans in the Diaspora and those with parents of foreign country origins left out of the citizenship question in the COPAC draft. There is need to build a Zimbabwe that comprehends and taps into the opportunities of the current global architecture, where nationhood is no longer defined by domicile in a one single fixed geographical entity. So, we demand citizens and not subjects please, COPAC!

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