

ZIMBABWE BRIEFING

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Supreme Court Ruling and Violence to Spin Zimbabwe Out of Control

The Zimbabwe Supreme court ruled last week that President Robert Mugabe must call for elections in three constituencies in Matabeleland. This is after the dismissal of the three legislators by their party, the smaller MDC led by Welshman Ncube for defecting to the mainstream MDC party led by Morgan Tsvangirai. The Government of National Unity, in the hope of preserving peace, had put a moratorium on elections and so far Zimbabwe has more than 20 vacant parliamentary and senatorial seats owing to deaths and dismissals.



Former Nkayi South Member of Parliament, Abednico Bhebhe, one of the three expelled Legislators who won a case against Mugabe in Supreme Court

While the Supreme Court judgement was still being digested, MDC-T was under siege when more than 120 armed soldiers and hundreds of ZANU PF supporters besieged the party's Secretary General and Finance Minister Tendai Biti disrupting a rally planned for Darwendale a farming community outside Harare. The two events, distant from each other as they appear, however speak to the challenges facing the country in the next few weeks. This after the Supreme Court said elections must be held in the three constituencies and by inference in all other vacant constituencies by 31 August 2012. This gives the political leadership at least 5 weeks to prepare for the elections, that is look for the money and jolt the Zimbabwe Electoral Commission into action.

The ZANU PF side of the GNU has already declared, "when a defeat tests so sweet" in reference to the Supreme Court ruling. In other words ZANU PF feels vindicated by the ruling which not only speaks to its [ZANU PF] call for an early election but also supports the argument that the GNU is subverting the right of people to democratically elect their preferred political leadership. ZANU PF's is savouring this ruling which on paper is a loss to Mugabe but politically a boost to a demand for an election by the same person. This, in other words is a ruling out of time owing to the changed political circumstances in the country. The issue is that President Mugabe

will be under pressure from the hawks in his party and security sector to hold the elections in the three constituencies as proof that Zimbabwe is indeed ready for an election.

ZANU PF is also likely to argue that it makes no sense to hold elections in three constituencies and rather elections should be held in all constituencies including for the Presidency. It is in rare moments in life when Supreme Court rulings fit so squarely with political plans of the dominant political party. Resources will be stampeded from secret diamonds slash funds con-

ZANU PF will again pour its ill gotten resources [in this drought year] to buy-votes and intimidate opponents and "win" the by elections as way of boosting its supports base and mobilise its supporters and structures.

The Supreme Court ruling is a serious test case for the political leadership as it leaves little if any time for manoeuvre by the leadership without falling foul of the law or ruling. This brings us to the other issue in this whole conundrum, the events in Darwendale over the weekend. It apparently took the intervention, not of the MDC Co-Home Af-



Former Lupane East Member of Parliament, Njabuliso Mguni, one of the three expelled legislators who won a case against Mugabe in the Supreme Court

trolled by the military and intelligence to facilitate the holding of elections in the three constituencies or whole country under the old Lancaster House constitution. ZANU PF now has more ammunition in its armour to call for the speedy finalisation of the new constitution or a return to the old constitutional order.

fairs Minister Theresa Makone, but the Defence Minister and ZANU PF's legal Affairs Secretary Emmerson Mngangwa and Intelligence Minister Sydney Sekeramayi to have the soldiers fall back to wherever they came from. This is despite the fact that the MDC-T rally had been cleared by the police and a sen-

ior member, Tendai Biti, was addressing the same rally. Soldiers and ZANU PF supporters were heard clearly shouting that the MDC was not welcome in that area and will not be allowed to carry out any political activity. The soldiers and the ZANU PF supporters destroyed MDC posters and pulled down the stage set in the stadium for the rally. Mind you these were not senior army officers but junior rank soldiers who are however thoroughly brainwashed and will take whatever instruction. This refutes the often peddled untruth that junior soldiers are professional and will not accept to be used by the seniors. This notion is a fallacy and need to be dismissed by any right thinking Zimbabwean as evidence on the ground clearly shows that the junior ranks are as equally brainwashed as the Generals.

There might be one or two professional soldiers but in numbers they won't make much difference. Interestingly the MDC party supporters made a beeline to the nearest police station to report the assaults by ZANU PF supporters and soldiers. The police not only stated their own fear of the soldiers but went on to arrest two MDC supporters on allegations of assault. Tendai Biti made the mistake of emotionally declaring that his party will retaliate if attacked. This statement has been noted and will come back to haunt the MDC party. First the party has no capacity to fight a professional army and secondly the party should promote peace even under intense provocation. This is the message that Biti and team need to be aware of and that any reckless statement will be used by ZANU PF to justify, and instigate more violence against the MDC supporters. The next few weeks are going to be full of drama and interesting as we wait to see how the political leadership reacts to this crisis. The Supreme Court ruling might as well result in Zimbabwe spinning out of control yet again.

By David Mutomba, he is a Zimbabwean Journalist and Human rights activist

Dlamini-Zuma New AU Chair: Implications for Zimbabwe

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dewaMavhinga

Dr. Nkosazana Dlamini-Zuma (63), South Africa's Home Affairs minister and president Jacob Zuma's former wife, last Sunday made history when she was elected to be the first woman to become chairperson of the African Union (AU) Commission – a victory for women's empowerment that did not come easy. Despite being put forward by the Southern African Development Community (SADC), she had failed to win the top AU post at the AU Summit in January, a feat she accomplished this week when she got the backing of 37 countries in the fourth round of voting that took place in Addis Ababa, Ethiopia. Potentially, Dr. Dlamini-Zuma's ascendancy to the most powerful AU post has far-reaching implications for Zimbabwe's difficult and painfully slow political transition.

On the face of it, one would expect that she would jeopardise Zimbabwe's political transition given that, during her tenure as South Africa's foreign affairs minister under former president Thabo Mbeki, she had pursued the now discredited policy of quiet diplomacy – a euphemism for offering friendship to Zanu PF while turning a blind eye to the festering Zimbabwe crisis. Back in 2002 relations between Madame Dlamini-Zuma and the Movement of Democratic Change (MDC) were so strained that at some point, MDC leader Morgan Tsvangirai wrote a letter of complaint to president Mbeki over the manner in which Dr. Dlamini-Zuma was handling the crisis



On Sunday, 15 July 2012, the African Union (AU) elected South Africa's home affairs minister Dr. Nkosazana Dlamini-Zuma to be the first female Chairperson of the AU Commission. Dlamini Zuma, second from right

in Zimbabwe, particularly complaining that she was only talking to Zanu PF while ignoring the MDC.

But, over time, a number of things have changed, and now, under the Zuma administration, there has been a significant shift in South Africa and SADC's policy towards Zimbabwe, which in turn may influence the new AU Chair's attitude. Over the last couple of years SADC has been insisting that Zimbabwe political leaders must fully implement all agreed provisions of the Global Political Agreement (GPA) to level the political field and pave way for credible, free and fair elections held under conditions materially different for 2008 where the presidential run-off poll was held under conditions of extreme violence.

Notably, at the SADC summit

in Luanda, Angola, at the beginning of June, regional leaders prevented president Mugabe from fast-tracking Zimbabwe to sham elections and reiterated their position that the country cannot go to elections in the absence of critical reforms including a new constitution affirmed through a national referendum – a key benchmark in the SADC roadmap to elections. It was at this same SADC summit that regional leaders also re-affirmed their support for Dr. Dlamini-Zuma as the SADC candidate for top AU post. It is therefore unlikely that at the AU Dr. Dlamini-Zuma would go against the SADC position on Zimbabwe.

Whereas previously the AU had taken the approach of quietly deferring to SADC on the Zimbabwe issue, to the extent that at the just ended AU summit Zimbabwe did not feature

on the agenda where continental leaders discussed a number of other conflict-ridden countries including Sudan, South Sudan, Mali, Somalia and the Democratic Republic of Congo. The election of Dr. Dlamini-Zuma may lead to a significant change as we expect greater collaboration and synergy between SADC and the AU in the issue of Zimbabwe.

It may very well be that some in the Zanu PF camp may have sensed the re-alignment of forces and perhaps may have secretly campaigned against Dr. Dlamini-Zuma's nomination for the AU Commission chairperson's post. When I informed a colleague last week that president Mugabe had travelled to Ethiopia for the AU summit he jokingly asked, "To vote for Ping?" referring to the former AU chairperson who eventually lost to Dr. Dlamini-Zuma.

Congratulations are in order to Dr. Dlamini-Zuma, to South Africa and to SADC on the election of Madame Zuma to lead the AU Commission – she adds to the growing number of powerful African women who have emerged in recent years to take Africa forward, including Liberia's president Ellen Johnson-Sirleaf, and the recently installed Malawi leader, Madame Joyce Banda. May her reign as AU chair bring about real change and assist Zimbabwe to find a lasting solution to its seemingly perennial political conflict.

Dewa Mavhinga, Regional Coordinator, Crisis in Zimbabwe Coalition

Army And Police Guilty Of Infringement Of The Right To Protest

UPCOMING EVENTS

19 July, Zimbabwe Dialogue Series Public Lecture, University of KZN Howard Campus, Durban, South Africa

1-4 August, Civil Society Advocacy Mission, Tanzania

6-9 August, 8th Southern Africa Civil Society Forum, Maputo

15-16 August, SADC Council of Ministers Meeting

17-18 August, SADC Summit, Maputo

The Zimbabwe Human Rights NGO Forum earlier this week reported that High Court judge, Justice Chitakunye awarded delictual damages of US\$1 500.00 to Ms Mavis Dandira for whom the Human Rights Forum had filed a lawsuit following her assault in June 2003 by members of the Zimbabwe National Army and the police who broke up a peaceful demonstration in the Highfields suburb of Harare. The court ruling is an unequivocal affirmation of citizens' right to peaceful protest, which also shows that the wheel of justice turns slowly in Zimbabwe; the case was filed in January 2004 but the decision was only delivered in July 2012.

In the court case, the State, represented by the Attorney General's office, admitted that there was indeed a joint operation between the police and the army to stop the peaceful demonstration but denied that Ms Dandira, or any other protester, had been assaulted. However, the judge found no evidence that, either Ms Dandira or the other protesters were acting in any violent or disorderly manner that would justify the use of force by the police and army officers and further concluded that the plaintiff, Ms Dandira, had not conducted herself in any way that justified the ZNA soldiers and the police officers to assault her, hence the assault on her was wrongful and unlawful.



The judge also held that, the soldiers and police officers had clearly proven that they were conducting an officially sanctioned operation, and were acting in the course and scope of their duties and employment. As a result, the Minister of Home Affairs and the Commissioner General of Police were vicariously liable for the actions of the police officers and the Minister of Defence, for

that of the soldiers.

In welcoming the judgment, the Zimbabwe Human Rights NGO Forum noted that decision vindicates the Forum and other human rights organizations that have consistently identified the army and the police as indeed the main perpetrators of organized violence and torture in Zimbabwe. Finally, the Forum expressed hope that the judgment will compel the government to immediately adopt measures to ensure the prevention of organized violence and torture in Zimbabwe including the expeditious ratification and domestication of the International Convention Against Torture and other Cruel and Inhuman or Degrading Treatment (CAT) and criminalization of torture.

Report compiled by Dewa Mavhinga, Regional Coordinator, Crisis in Zimbabwe Coalition

Inbrief Around Zimbabwe

The UK And EU May Conditionally Suspend Zimbabwe Sanctions



UK Parliamentary Under Secretary of State for Foreign and Commonwealth Affairs, Alistair Burt

The extract below from a statement by the UK Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs (Alistair Burt) in a debate that took place in Westminster Hall on July 17 indicates that the UK and EU may be preparing to conditionally suspend sanctions on president Mugabe’s inner circle to encourage reforms towards credible, non-violent, free and fair elections:

“That leads me on to the important and live question of the EU’s targeted measures on Zimbabwe. As all are aware, those measures are under discussion in Brussels. In answer to the questions from hon. Members, let me set out our aim. We want to support the process towards a credible referendum ahead of free and fair elections in 2013. In doing so, we need to encourage progress and incentivise reform, which is why we need to use the measures in the right way to effect a change in behaviour. Therefore, we, and our EU partners, are looking at what options exist to best respond to the clear calls from reformers, including the Movement for Democratic Change, the UN High Commissioner for Human Rights, and President Zuma and the SADC, for the EU to show flexibility to support the reform process.

I was grateful to the hon. Member for Vauxhall, because she put it correctly when she spoke of mixed feelings about how to proceed, and of the uncertainty. I do not think it would be any surprise to indicate that that is exactly where we all are. It is difficult to get the balance right. However, we believe the best way to support progress is through a shift in the EU approach.

We have, therefore, proposed to partners that, if there is a peaceful and credible constitutional referendum, the EU should respond accordingly with a suspension of the ban on direct EU development aid and a suspension of the asset freeze and travel ban on all but a small core of individuals around President Mugabe, particularly those who will have most influence on the potential for violence in the next election. For the avoidance of doubt, there is no prospect of any suspension being applied to President Mugabe himself.

The process will demonstrate to reformers across the political spectrum that the EU is serious about responding to concrete progress on the ground, and reflects our confidence in the facilitation process being undertaken by President Zuma and the leaders of SADC. It also puts the onus on to the Zimbabwe Government to live up to their commitments. If the situation deteriorates, we can, of course, respond appropriately.

As my hon. Friend the Member for Tiverton and Honiton (Neil Parish) said, all EU partners need to agree a shift in approach, and discussions are ongoing. Alternative approaches have also been suggested, including steps the EU could take in advance of a constitutional referendum.”

Photo Journalist Arrested In Harare

Photojournalist Aaron Ufumeli who works for the privately-owned Zimbabwe Newspaper *NewsDay* was arrested around 9:30am on 17 July 2012 while covering a demonstration organised by the women’s movement at the Africa Unity Square in Harare the capital of Zimbabwe. The women were demonstrating against the reckless and random arrest of women for allegedly violating a law prohibiting women from being in public places after 9pm because, allegedly, they would be “loitering for the purposes of prostitution.”

Umfumeli was arrested and detained by an unidentified police officer while taking pictures of what appeared to be a confrontation between a police officer and one of the demonstrators. Umfumeli’s camera was confiscated for about 20 minutes the police insisting that the photos have to be erased. This goes to show the degree of restriction that is imposed on the media by state security agents in an attempt to curtail media freedom.

Supreme Court Ruling Compels President Mugabe To Set Date For By-Elections



The Supreme Court last week ruled in favour of Norman Mpofu (Bulilima East), Abednico Bhebhe (Nkayi South) and Njabuliso Mguni (Lupane East) who approached the courts after President Mugabe refused to call for by-elections in their constituencies left vacant following their dismissal from the professor Welshman Ncube-led MDC. President Robert Mugabe was challenging a Bulawayo High Court decision passed by Justice Nicholas Ndou in October last year directing him to gazette a date for by-elections in the mentioned constituencies. The Supreme Court order compels the Zanu PF leader to announce a by-election date for the three vacant seats in Matabeleland by August 30 this year.

Parliament Gives Green Light For The Human Rights Commission Bill And The Electoral Amendment Bill

The House of Assembly passed the Human Rights Commission Bill last week. The Bill seeks to operationalize the Human Rights Commission to deal with human rights abuses starting from 13 February 2009, which was the inception of Zimbabwe’s inclusive government, going forward. This means that violations and human rights abuses that took place prior to February 2009 will not be addressed the Commission chaired by Professor Reg Austin. However, this does not mean impunity for past abuses as there government has to set up a separate institution, such as the Truth, Justice and Reconciliation type of commission to examine past human rights abuses.

According to the MDC-T spokesperson Douglas Mwonozora, post-independence conflicts and human rights abuses are going to be dealt with by the Peace, Justice and Reconciliation Commission that has been established in terms of the new people driven Constitution. The arrangement to have two separate institutions is in line with what the United Nations High Commissioner for Human Rights, Navi Pillay recommended after her visit to Zimbabwe at the end of May 2012. Parliament also passed the Electoral Amendment Bill which has received severe criticism for failing to grant millions of Zimbabweans in the diaspora the right to vote.

31ST Plenary Assembly Of The SADC Parliamentary Forum

The SADC Parliamentary Forum (SADC PF) 31st Plenary Assembly was held in Maputo, Mozambique from the 8th to the 16th of July 2012 under the theme “Strengthening Parliamentary Democracy”. The Plenary Assembly was attended by 13 SADC member Parliaments. Chairperson of the SADC PF and Speaker of the House of Assembly of Zimbabwe, Hon. Lovemore Moyo reiterated on the need for SADC to establish its regional Parliament in order to accelerate the implementation of decisions of the Summit Heads of States and Government for the benefit of the parliament. The Chairperson called for continuous dialogue with the SADC Heads of State on the need to amend the SADC treaty to include the establishment of a SADC Regional Parliament alongside other institutions established in accordance with article 9(1).

Mr Murumba Werunga, Emeritus Clerk, Parliament of Kenya, who heads the Centre for Parliamentary Studies and Training implored SADC Parliaments to continue instituting legislative reforms in order to strengthen their institutional and operational efficiency. SADC member parliaments in presenting country reports to the 31st Plenary Assembly emphasized on the need for respecting the principle of separation of powers between the three arms of government as a way of strengthening democracy within SADC countries. They therefore called for legislative reforms to be sustained in order to strengthen the role Parliament in building functional and sustainable democracies in the region. The Plenary assembly resolved that from the 33rd Plenary Session all its sessions will be changed from the current conference style to start operating like a parliament thus adopting parliamentary procedure. The Plenary Session adopted the Benchmarking and Self-Assessment Toolkit, paving way for implementation of the Benchmarks for Democratic legislatures in the Southern Region. Hon. Beatrice Nyamupinga, Chairperson of the Regional Women’s Parliamentary Caucus (RWPC) called upon SADC member states to accelerate the ratification of the SADC Protocol on Gender and Development in order to facilitate its facilitate its implantation. The 32nd Plenary Assembly of the SADC PF will be hosted by the Parliament of the Republic of Malawi in October 2012.

General Solomon Mujuru’s Estate Valued at US\$9 Billion



The late Retired Army General, Solomon Mujuru

The late Retired Army General, Solomon Mujuru’s estate is believed to be worthy US\$9 billion according to a report by SW Radio Africa.

Mujuru is one of the many top ZANU PF officials to have questionably amassed so much wealth . His Estate include seized farms, mining and tourism. For instance in 2001 he targeted white commercial farmer Guy Watson-Smith and violently removed him off his two farms in Beatrice. Ironically he died on one of these farms.

High Court Judge Blasts Police for Dereliction of Duty

Judge Mathonsi recently presided over the groundbreaking case **State v James Muromo & Another** HH 286-2012, a matter that demonstrates the extent to which some of the Zimbabwean law enforcement officers, particularly the police, have not only abdicated their constitutional role of protecting the public but often collude to harbour criminals. In passing judgement, the Judge made the following remarks:

"The circumstances of this case are an indictment of our criminal justice system. Gruesome offences were committed right under the noses of police officers. In fact, one of the victims actually ran from his assailants to hide behind a police officer. This did not deter the assailants from dragging him from there and severely assaulting him inflicting fatal injuries. When the assailants were working on their second victim, a hapless young woman whose braids they had pulled off her head and they were assaulting her with logs even on her private parts, police officers arrived and they were even urinating in her mouth.

"This did not stop the savagery as they went further to dump her lifeless body at her homestead. Although

the assailants are known, were mentioned by name, and the police officers witnessed the assault only to plead with the criminals to release the victims, we are told more than 10 years after the victims met their painful

should do a lot of soul searching if they are to sustain any credibility in the eyes of those whose safety and well-being they are sworn to safeguard. The same can be said of the prosecution which did not acquit itself well in these proceed-



death, that the "co-accused persons are still at large". How can they be at large when the police officers witnessed the assault? Why did they not arrest them then and there? Why did it take such a long time to even commence this excuse of a trial?

"It really leaves a sour taste in the mouth, as it suggests that the police just stood akimbo as innocent victims were bludgeoned to death in their full view. The assailants were then allowed to walk free.

"In my view, the police

ings and one would not be judging them harshly at all by saying that they not only trivialised the offence but at times appeared to protect accused persons showing no respect whatsoever for the sanctity of human life."

This case represents one of the several cases of low profile victims of organised violence in Zimbabwe, and whose names would never appear in the statistics books. It also highlights the constraining environment in which some of the few independent Judges like Mathonsi J are operating in. The po-

lice officers are not only abdicating their constitutional and legislative responsibility to bring criminals to book but actually shield vile criminals. It beggars belief as to who shall guard such intransigent guards.

The Judge's remark in this case also echo, but slightly falls short of, the sentiments by the former Zimbabwe High Court judge Justice Gillespie when he outlined reasons for his resignation in a review of a criminal case in 2001. Judge Gillespie had accused the government of promoting a campaign of terror and said increasing lawlessness forced him to quit although the government-owned media dismissed his sentiments and calling the judge an "unrepentant racist" former Rhodesian whose criticism had demonstrated a "disgusting abuse of the bench" (The Herald 6/10/2001). One wonders whether such accusations will be levelled against Mathonsi J, for his criticisms, albeit in a different context.

On a note of optimism the Muromo case demonstrates that if Zimbabwean judges properly uphold the rule of law and their shared judicial values of independence and objectivity like Judge Mathonsi, then they present a potent force that would reform the judiciary, with a domino effect on the other arms of the state.

By International Liaison Office of the Zimbabwe Human Rights Forum