

The LEGAL MONITOR

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COST-FREE

Scandal

CHIPINGE-A scandal is brewing after a Magistrate blocked the enforcement of a High Court order that would have resulted in him losing access to a farm that he received under the controversial land reform programme.

Chipinge Magistrate, Samuel Zuze last Tuesday convicted four farmers, Algernon Taffs of Chirega Farm, Z.F Joubert of Stilfontein, Mike Odendaal of Hillcrest and Mike Jahme of Silverton Farm for refusing to vacate their properties.

Zuze did not mention that he is holding an offer letter, issued in November 2009, for Jahme's Silverton Farm when the men appeared before him and therefore had a direct interest in the case which, in normal circumstances, would have led him to recuse himself from considering the matter. Instead, Zuze went on to preside over

the case, convicted and sentenced the farmers to a US\$800 fine each, and ordered them to vacate their homes and farms by last Wednesday evening (24 hours' notice).

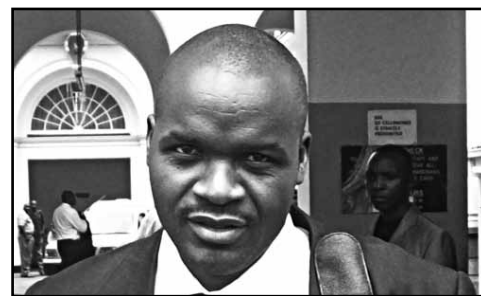
Zuze's ruling would effectively clear the way for him to move on to the property.

Not only did he block an attempt by the convicted farmers to then lodge an appeal against the conviction and sentence, but Zuze went further by ordering the arrest of Trevor Gifford, the immediate past president of the Commercial Farmers Union and Dawie Joubert, who had travelled to Chipinge on Thursday to serve the High Court order setting aside the eviction, according to the two farmers' lawyer, Trust Maanda.

The farmers' lawyer had approached the High Court because of the unreasonable nature of Zuze's order for them to vacate their properties at such short notice. The High Court granted the farmers' application by suspending their evictions.

But Zuze ordered the arrest of Gifford and Joubert in Chipinge as they attempted to serve the Notices of Appeal as well as the High Court order suspending the eviction on the Clerk of Court in Chipinge.

Maanda said that on the instructions of Zuze, the Clerk refused to accept and stamp the Notices of Appeal. And instead of complying with the High Court Order, issued by Justice Samuel



Trust Maanda

Kudya, law officers arrested Gifford and Joubert for contempt of court. To Page 4

ZZZICOMP is watching

HARARE-Three influential civil society organisations have set up an independent mechanism to monitor the Parliament-led constitution-making process that has been dogged by a myriad of problems ranging from funding to political party bickering.

The monitoring initiative is known as the Zimbabwe Peace Project (ZPP), Zimbabwe Election Support Network (ZESN) and Zimbabwe Lawyers for Human Rights (ZLHR) Independent Constitution Monitoring Project (ZZZICOMP).

ZZZICOMP will assess and evaluate the constitution-making process against established principles, benchmarks and standards of constitutionalism and constitution-making, including openness, transparency, inclusivity, legitimacy, accessibility and receptiveness.

ZANU PF leader President Robert Mugabe, Movement for Democratic Change (MDC) leader Prime Minister Morgan Tsvangirai and his deputy Arthur Mutambara, agreed to undertake a fresh constitution-making process when they signed the Inter-Party Political Agreement (IPA) in September 2008. The IPA formed the basis for the formation of the fragile coalition government in February last year.

ZZZICOMP's goal is to objectively monitor, observe and report on the work of the Constitution Parliamentary Select Committee (COPAC), the public outreach programme, the work of the Thematic Committees and the Drafting Committee, and the final document produced in order to adjudicate how democratic and transparent the constitution-making process is.

A statement issued by ZZZICOMP's three principals namely Rindai Chipfunde-Vava of ZESN, Jestina Mukoko of ZPP and Irene Petras of ZLHR at a press conference held in Harare last Wednesday said the body will judge if the final constitutional document "accurately reflects the input of broad and diverse popular participation" after monitoring the process.

Chipfunde-Vava said the three partners in ZZZICOMP are non-partisan, independent and professional organisations whose main functions are to promote peace, promote democratic

elections and to foster a culture of human rights and constitutionalism in Zimbabwe.

ZZZICOMP, which will deploy two monitors in each constituency has already trained 420 monitors, as well as provincial coordinators and other key personnel who are now on the ground across the country observing the operating environment in general.

The monitoring body said its activities will act as a confidence-building measure for the people by holding those leading the process to account and insisting on greater transparency, pressuring for a conducive operating environment and availability of diverse information relating to constitution-making.

It would also assist in ensuring that the draft constitution ultimately produced is a true reflection of the input provided by those participating in consultative and outreach processes.

ZZZICOMP said it was worried about the current operating environment, whose conditions it said currently makes it impossible for people to participate freely in the constitution-making process.

"Repressive legislation that inhibits freedom of assembly, association, expression and movement has not been repealed or amended, and continues to be selectively applied by the authorities," said ZZZICOMP.

ZZZICOMP said in January alone, it recorded at least eight documented and confirmed incidents of torture, assault and various forms of intimidation, allegedly by ZANU PF youths, the Zimbabwe Republic Police and the Zimbabwe National Army personnel in Mudzi, Kuwadzana, Domboshava, Chimbondoro, Chiramwiwa and Harare.

The stop-start constitution making process was once again suspended a fortnight ago following sharp differences within President Mugabe and Prime Minister Tsvangirai's coalition government over a consultation process that is already behind schedule by several months.

The suspension, the latest setback for the process set to produce a new constitution to replace the one Zimbabwe adopted in 1980 is just one indicator of the multiple challenges facing the fragile coalition government.

Besides being a key result area for the transitional government, a new constitution would also lead to fresh elections to end the southern African country's long running political crisis.

The management committee of the Parliamentary Select Committee made up of representatives from the three governing parties suspended the outreach programme on the new constitution because they were reportedly divided on the criteria for the selection of rapporteurs to accompany the outreach teams.

State media reports also indicate that the process has been hampered by lack of adequate funding and quarrells over who will foot the bill for the recently held training of outreach teams

Seventy teams are supposed to be deployed throughout the country to solicit for ordinary people's views but they have been told to put their programmes on hold until the fresh disputes are resolved.

The unending problems affecting the crafting of the country's supreme law also prompted the National Constitutional Assembly (NCA) to label the constitution-making process "a circus."

NCA chairman Lovemore Madhuku, whose constitutional reform body is opposing the current constitution-making process over sharp differences with President Mugabe and Prime Minister Tsvangirai's approach to the process, said COPAC had failed to register progress within its set timelines while the process is dependent on the views of politicians.

"We cannot watch this circus. It (process) is depending on the temperatures of politicians. They have failed to follow their timelines so it is now an open process," Madhuku told journalists at a press conference held in Harare last Thursday.

The University of Zimbabwe (UZ) law lecturer said Western donors and governments must stop wasting their resources by funding the current process.

"For the first time Zimbabweans are going to protect Western taxpayers. They (politicians) are not writing a constitution. They are siphoning money from the West," he said.

The NCA chairman said his organisation will oppose the constitution-making process and any document that comes out of the process.

"We will oppose the constitution that will come out of it. We don't want to legitimise a bad constitution-making process. Constitutions must emanate from the people," said Madhuku.



ZZZICOMP representatives Rindai Chipfunde-Vava, Irene Petras, Choice Ndoro and Wellington Mbofana

Farmer to appeal High Court ruling

HARARE-Colin Cloete, a farmer whose application for a SADC Tribunal ruling to be registered and enforced in Zimbabwe was dismissed last week will appeal to the Supreme Court, his lawyer has said.

This follows a High Court ruling that although the government was bound by the SADC Tribunal ruling made in favour of farmers more than a year ago, Zimbabwe courts could not enforce the judgement here because it infringed on public policy.

Last week High Court judge Bharat Patel dismissed an application by the former Commercial Farmers Union president Cloete to register and enforce a ruling made by the Namibian-based SADC Tribunal made in November 2008 to have 79 commercial farmers compensated for their land which has been seized for the controversial land reform programme and allow them to remain on the land.

Advocate Lewis Uriri who represented Cloete said he would appeal against Justice Patel's ruling which says enforcing the SADC Tribunal ruling would have a negative impact on Zimbabwe's agrarian reform policy.

Justice Patel dismissed the State – led by Fatima Maxwell – who had contended that Zimbabwe was not bound by the SADC

Tribunal since Harare had not ratified it. Maxwell had argued that the Tribunal had no jurisdiction over Zimbabwe, but Justice Patel ruled otherwise.

"It seems to me legally unsustainable to espouse a major facet of the amended SADC regime and to simultaneously eschew those features of the same regime that are deemed to be politically inexpedient and unpalatable," said Justice Patel. This was in reference to the fact that Zimbabwe has participated in the SADC Troika which was created by the same SADC Treaty which established the Tribunal. Added Justice Patel: "All member states (of SADC), including Zimbabwe, concluded and signed the Agreement Amending the Protocol on Tribunal on the 3rd of October 2002... It follows that the Republic of Zimbabwe thereupon became subject to the jurisdiction of the Tribunal and that the jurisdictional competence of the Tribunal in the Campbell case, which was heard and determined in 2008, cannot now be disputed. The respondents' (State) position in this regard, is essentially erroneous and misconceived."

However, Justice Patel went on to dismiss the application to have the SADC Tribunal ruling enforced in Zimbabwe, saying it was against the country's "public policy"-a development which Cloete's lawyer has said will form his basis for appeal at the Supreme Court this month. "Although the Tribunal's decision, strictly

regarded is confined to the 79 applicants before it, its ramifications extend to the former owners of all the agricultural land that has been acquired since 2000," said Justice Patel, in his 20 paged judgment handed down on Tuesday last week.

He added: "Apart from the political enormity of any such exercise it would entail the eviction, upheaval and eventual relocation of many if not most of the beneficiaries of the land reform programme. This programme, despite its administrative and practical shortcomings, is quintessentially a matter of policy in Zimbabwe, conceived well before the country attained its sovereign independence."

When Mike Campbell and 78 other farmers – who included Cloete – took Harare to the SADC Tribunal they argued that the government must have expected that some of its citizens would take it there and must be bound by its ruling. "As for the doctrine of legitimate expectation, the applicants before the Tribunal and others in their position are absolutely correct in expecting the government of Zimbabwe to comply with its obligations under the SADC Treaty and to implement the decisions of the Tribunal," said Justice Patel. "However, I take it that there is an incomparably greater number of Zimbabweans who share the legitimate expectation that the government will effectively implement the land reform programme and fulfil their aspirations

there-under... I am amply satisfied that the registration and consequent enforcement of that (SADC) judgement would be fundamentally contrary to the public policy of this country." Uriri said he was happy in that the High Court had ruled that Zimbabwe was bound by the SADC Tribunal ruling.

"We are going to file an appeal to the Supreme Court early February. The state should have seen this coming; it voluntarily took the risk to be part of the SADC Treaty. It is contrary to invoke domestic law to defeat its obligation at international law when it has undertaken to be bound," said Uriri.

Should the Supreme Court not rule in favour of Cloete, Uriri said they would approach the Tribunal for it to refer the matter to the SADC Summit.

"We would have exhausted all domestic remedies in search of justice," said Uriri. Almost all white-owned land in Zimbabwe has been seized in the past 10 years under the controversial land reform programme. President Robert Mugabe's critics say the land seizures – often violent – have helped destroy the Zimbabwe's economy as much of Zimbabwe's best land has been allocated to people who have no experience in commercial farming.

Zim could slide into recession

HARARE-The Crisis in Zimbabwe Coalition (CZC) has warned that the political impasse caused by the failure to implement the Inter Party Political Agreement (IPA) could lead Zimbabwe to slide into recession and back to the days of runaway hyper inflation and re-activation of State sponsored violence.

CZC chairperson, Jonah Gokova, said on Thursday at the launch of a report on the year-old transitional government that its member organisations noted the continued violation of human rights and a lack of political will on the part of ZANU PF to implement the IPA in "good faith".

The report collates views from CZC member organisations and gives an analysis of the outstanding issues to the IPA. It gives the individual views of a cross section of organisations ranging from churches, students, the youth, women's organisations and the media.

"Repressive laws remain with no clear reforms set out. Cases of political violence persist while the public media continues to churn out propaganda and denigrate both civil society and other political players," said Gokova.

"The political impasse caused by the failure to abide by provisions outlined in the agreement could possibly lead to the recession of Zimbabwe to the days of runaway hyper inflation, re-activation of politically motivated and State sponsored violence, food shortages and general decay in the provision of social services."

Addressing the same occasion, Zimbabwe Journalists for Human Rights (ZJHR), chairperson Pedzisai Ruhanya said Zimbabwe needed democratic consolidation, which entails the strengthening of democratic institutions especially the rule of law, and the protection of civil and political liberties.

"Political institutions and civil society need to be infused with democratic practices, for example, by the empowerment of civil society to increase popular participation and make it more difficult for elite to manipulate democratic institutions," said Ruhanya.

Ruhanya said the current problems of the transitional government were a result of a "ZANU PF and President Robert Mugabe system of governance" adding that the party and its leader were the genuine outstanding issues".

"What we had in Zimbabwe before the inclusive government was a government without citizens. It was a government which had its own agenda which did not resonate with those that it governed. This view is supported by the outcome of the March 29 2008 harmonised elections in which those who were governing and because there were governing without citizens, the citizens decided against them," said Ruhanya.

He added: "State machinery is without doubt under the control of ZANU PF, the military, the army and the central intelligence. These institutions have become the political commissariat for ZANU PF because during the elections they were campaigning on behalf of ZANU PF which is not the role of the army."

A number of outstanding issues have been raised which include; the refusal of the government to share the provincial governorship posts as per the agreed formula, the removal of the Attorney General and Reserve Bank of Zimbabwe Bank Governor, the continued use of State sponsored



This child faced the brunt of political violence still rife in some parts of the country. Pic courtesy of CZC

violence, the failure to swear in Roy Bennett as Deputy Minister of Agriculture, the continued selective application of the law and failure to free the airwaves.

"The GPA exhorts the parties to the agreement to work together to create a genuine, viable, permanent, sustainable and nationally acceptable solution to the Zimbabwe situation and in particular to implement the agreement with the aim of solving once and for all the current political and economic situations and charting a new political direction for the country," said CZC chairperson, Gokova.

Abuses could increase Zim isolation

HARARE-ZANU PF's decision to use power sharing talks as leverage to push for the removal of Western imposed sanctions could actually increase international isolation, particularly as rights abuses continued last week.

The European Union (EU) is reviewing its travel and financial sanctions policy imposed in 2002 on President Robert Mugabe, his inner circle and companies accused of propping up the authoritarian previous ZANU PF government.

Now only part of a power sharing government after losing elections in March 2008, ZANU PF has announced that it would make no further concessions in ongoing political talks until the EU and the US lift the sanctions.

This effectively means talks aimed at resolving differences and fully implementing the Inter Party Political Agreement (IPA) to allow for democratic reforms as envisaged in the agreement are deadlocked.

Political analysts and rights groups such as Human Rights Watch (HRW) say the decision, compounded by ongoing abuses of property and individual rights by State institutions and officials linked to ZANU PF would harden the international community's stance on Zimbabwe.

The European Union, the US and other Western nations such as Canada, Australia and New Zealand want the IPA implemented in full, as well as an end to harassment and intimidation of human rights defenders before lifting the sanctions.

But just last week-as ZANU PF announced the decision to suspend talks until the

removal of sanctions—clear cases of selective application of the law and police harassment of rights defenders undermined Zimbabwe's case for international re-integration.

The law has been thrown out of the window in Chipinge, where a Magistrate, Samuel Zuze, has refused to accept a High Court Order allowing evicted white farmers to stay until their cases were finalised. Instead, law officers arrested and detained Trevor Gifford, a former Commercial Farmers Union president for delivering the High Court order to the Magistrates Court on Friday.

On Tuesday, police arrested 11 women protestors who were part of a group of 200 defenceless Women of Zimbabwe Arise protestors in a march against falling education standards.

The State last week preferred murder charges on Emmanuel Chinanzvavana and Fani Tembo, councillors for Banket Town Council, who are themselves victims of abduction and torture by State security agents two years ago. Chinanzvavana and Tembo are accused of killing Lancelot Zvirongwe, a ZANU PF special interests councilor in Banket, in what lawyers describe as trumped up and politically motivated charges.

Georgette Gagnon, the Africa director at HRW, said human rights defenders and ordinary people remain at the mercy of brutal State agents despite the formation of the transitional government.

Gagnon said the EU should maintain the current sanctions policy until the IPA, which contains specific measures to promote freedom of speech and the rule of law, end politically motivated violence, and apply laws of the country fully and impartially in bringing to justice all perpetrators of politically motivated violence, is fully implemented.

"ZANU PF has continued committing grave human rights abuses and acting as if the agreement had never been signed. The European Union runs the risk of reinforcing ongoing repression and impunity in Zimbabwe if it eases the sanctions now," Gagnon.

Added Gagnon: "Some in Europe might believe that making concessions is the way to get ZANU PF to moderate its behavior, but ZANU PF has shown that it would only take this as a sign of weakness and dig in its heels even further. The European Union should insist before it takes any action that ZANU PF makes the concrete and irreversible improvements in human rights and the rule of law that it agreed to."

As part of its review of the sanctions policy, the European Parliament will this week host a panel discussion to evaluate the transitional government's progress, one year on. Minister of National Reconciliation, Sekai Holland, several EU Parliamentarians and Zimbabwean civic society leaders Okay Machisa and Gabriel Shumba will take part in the panel discussion to be held at the European Parliament buildings in Brussels.

Shumba, director of the Pretoria based Zimbabwe Exiles Forum told *The Legal Monitor* that the situation in Zimbabwe remained grave.

"It is very difficult right now for Zimbabweans in and outside the country. At ZEF, we are still receiving people fleeing political violence and other political abuses yet the transitional government should have given both exiles and Zimbabweans at home the basis to feel safe. Unfortunately no-one feels safe at all," he said.

Abductees tormmented again

CHINHOYI-A High Court Judge will this week preside over a bail application filed by two Movement for Democratic Change (MDC) councillors who are facing murder charges.

Emmanuel Chinanzvavana and Fani Tembo, councillors for Banket Town Council, who were themselves victims of abduction and torture by State security agents two years ago, and Givemore Hodzi were last Tuesday charged with the murder of Lancelot Zvirongwe.

The late Zvirongwe was a ZANU PF special interest councillor for Banket.

The State alleges that the three men kidnapped Zvirongwe between Banket and Chinhoyi and dragged him to an area in Banket where they killed him with an unknown weapon and dumped his body into Kingston Dam.

The State claims that the deceased sent some mobile text messages to Zimbabwe Broadcasting Corporation (ZBC) radio presenter Richmond Siyakurima, Assistant Inspector Chidakwa and to an unnamed District Administrator

fingering Tembo, Chinanzvavana and Hodzi for kidnapping him.

Tawanda Zhuwarara and Zvikomborero Chadambuka of Zimbabwe Lawyers for Human Rights (ZLHR) last Friday filed bail applications seeking the release of the three men.

Chinanzvavana and Tembo, who deny causing or arranging the death of Zvirongwe, said at the time that the deceased was allegedly abducted they were attending to a Save the Children activity at Kuwadzana Hall in Banket. A number of individuals are said to be prepared to confirm the abductees' statements. Hodzi was in Harare at the time Zvirongwe was said to have been kidnapped.

The trio argue that their names are only mentioned in text messages, which are vague and contradictory in tense, meaning and sense.

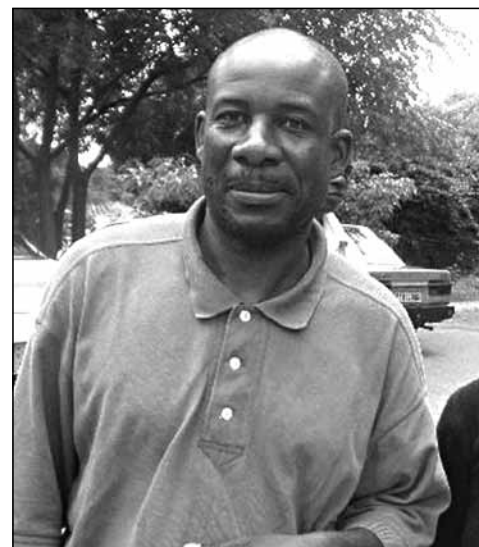
"Such evidence is unreliable and will not suffice to sustain a conviction let alone a serious one like murder," read part of their bail applications which will be heard on Tuesday in Harare.

Chinanzvavana was abducted by State security agents in October 2008 together with his wife Concilia and other Banket residents and accused of plotting to topple President Robert Mugabe's previous administration.

He is currently awaiting the Supreme Court's determination on his application for a permanent stay of prosecution together with several other political and human rights activists on the basis that their constitutional rights were violated as a result of their abduction, torture and incommunicado detention.

Tembo was abducted together with Terry Musona and Lloyd Tarumbwa from their Banket homes at the same time as Chinanzvavana in 2008. He was later located in Harare. The police claimed at the time that they were in protective police custody as they were to be used as State witnesses against the other abductees.

The arrest of the two Banket councillors comes barely a week after the arrest of another abductee and photo-journalist Andriison Manyere. Manyere who was arrested while filming an anti-government protest was released without charge.



Emmanuel Chinanzvavana

'Unproductive' Parly opens

The House of Assembly meets on 2nd February 2010, while the Senate will meet on 9th February 2010.

Parliamentary Update

The forthcoming sittings of both Houses are likely to be brief because there is so little work awaiting attention.

The House of Assembly Agenda for this week: Movement for Democratic Change (MDC) Chief Whip, Innocent Gonese's Private Member's Bill - to amend draconian sections of the Public Order and Security Act (POSA) - is due for its First Reading, but further progress on the Bill will then be delayed while it is considered by the Parliamentary Legal Committee, which could take a week or two. The only other items on the agenda are uncompleted motions carried over from last year and some 50 questions for reply by Ministers.

The Senate Agenda for the following week: the controversial Reserve Bank of Zimbabwe Amendment Bill, for which proposed amendments have been tabled, motions carried over and a few questions for Ministers.

No other Bills are ready for presentation. Those who have been anticipating the prompt passage of the POSA Amendment Bill and the early introduction of media and other reform legislation so long promised are likely to continue to be disappointed. Other Bills urgently needed but not yet in the pipeline are Bills to enable the Constitutional Commissions to function properly.

Once the Constitution Outreach Programme starts, which is now considered unlikely before the third week of February, it is planned to last for at least 65 days. As most MPs will be involved in that programme, it would be difficult to have Parliament sitting during that time, although MPs could be recalled to Parliament to deal with urgent business if necessary.

Last year Parliament was unproductive. After the formation of the inclusive government, there was very little in the way of legislation other than Bills from the Minister of Finance. As things stand, this year Parliament looks set for an unproductive few months.

Committee Meetings: House of Assembly portfolio committees and Senate thematic committees are scheduled to continue until the Constitution consultation programme starts in earnest.

Constituency Development Fund

The Constituency Development Fund announced by the Minister of Finance in his Budget Statement on 2nd December 2009 has not yet been set up. The Ministry of Constitutional and Parliamentary Affairs is working on a Bill to provide for the establishment and operations of this fund.

Once the Ministry has completed its draft, the Minister will have to take it to the Cabinet Committee on Legislation and Cabinet for approval before it can be submitted to Parliament.

Legislation Update

Budget Acts Gazetted: On 8th January, after normal Government Printer business hours (and after we sent out Bill Watch 1/2010), the Appropriation (2010) Act and the Finance (No. 3) Act were gazetted in a Gazette Extraordinary, effective immediately. [Note: Most of the tax law changes in the Finance (No. 3) Act are with effect from the 1st January.]

Bills in Parliament

House of Assembly: None. All Bills have been dealt with. No new Bills are currently being printed.

Senate: The Reserve Bank of Zimbabwe Amendment Bill awaits its Committee Stage. Amendments have been tabled for consideration.

Bill awaiting introduction: The Public Order and Security Amendment Bill (Mr Gonese's Private Member's Bill) was gazetted on 11th December. The Bill now awaits introduction in the House of Assembly.

Bills awaiting President's Assent and/ or Gazetting as Acts: Financial Adjustments Bill, Public Finance Management Bill and Audit Office Bill.

Statutory Instruments (SI):

On 1st January seven Budget-related statutory instruments were gazetted, effective immediately: SIs 1/2010 (VAT changes), 2/2010 (customs and excise tariff changes) 3 and 4/2010 (customs duty suspensions), and 5, 6 and 7/2010, which fix at 10 percent the rate of interest payable by taxpayers on unpaid customs duty (SI 5), capital gains tax (SI 6), and income tax (SI 7) and provide for the same rate of interest to be paid by ZIMRA on overdue refunds to taxpayers.

On 8th January three statutory instruments were gazetted, effective immediately: SI 8/2010 (fixing the maximum height and length of omnibuses for the purposes of the Road Motor Transportation Act); SI 9/2010 (fixing the 31st December 2010 as the deadline for the change-over from the "old" to the "new" motor vehicle number plates under the Vehicle Registration and Licensing Regulations); and SI 10/2010 (brokers' fees, levies payable to the Securities Commission, and registration and licensing fees under the Securities Act).

On 15th January, in another measure announced in the Budget, SI 11/2010 prescribed road toll fees, not only in US dollars but also in rand, pula, euro and pound; it also specified two additional tolling points near Harare, one on the Harare-Mutare road beyond Ruwa, the other on the Harare-Seke road beyond Chitungwiza.

On 22nd January the following statutory instruments were gazetted, effective immediately - 13/2010 (customs duty suspension on water treatment chemicals), 14/2010 (increase,

backdated to 1st November 2009, in national employment council dues payable by employers and employees in welfare and educational institutions).

Update on Inclusive Government

The Prime Minister returned to his office from leave on Monday 18th January.

Cabinet has not met this month. Its first meeting of 2010 will be this month (February).

The Council of Ministers met on Thursday 28th January.

No meeting of the National Security Council (NSC) which was scheduled for January, despite the statutory requirement that the Council must meet monthly. A February meeting has been tentatively arranged. The NSC has met only once since its formation - a clear violation of the Act. In the meantime ZANU-PF is said to have refused any suggestion to dismantle or reform the Joint Operations Command (JOC), which it says should remain in existence to oversee operational matters while the NSC handles matters of policy. MDC-T is said to be demanding that the JOC, be dismantled. This is another unresolved issue for the negotiators.

Joint Monitoring Committee (JOMIC) annual review of progress on the GPA is due 13th February. JOMIC is a creation of Article 23 of GPA.

Negotiations on GPA disputes: Negotiations were resumed this year, but quickly postponed: The negotiators met briefly on the evening of Wednesday 20th January after a break of nearly four weeks since the previous meeting of the principals on 23rd December. They made no progress and fixed their next meeting for 8th February. In the following days MDC-T negotiator Tendai Biti was reported to have told the MDC-T Standing Committee meeting on Friday that the negotiators were deadlocked, and party spokesman Nelson Chamisa was quoted as saying after the Standing Committee meeting that the party may refer the current "logjam" to President Zuma. Negotiators from the three parties have reportedly agreed on 16 of 28 outstanding power-sharing issues. But there has been no formal announcement on what has been agreed.

Deadlock?

The number of unresolved issues between the major parties in the inclusive government has increased to include, for example, the review of ministerial allocations - with the MDC-T said to be demanding the Ministry of Foreign Affairs and sole control of Home Affairs, the role of the permanent secretary in the Ministry of Media, Information and Publicity, George Charamba, who MDC-T accuse of leading a campaign of hate speech aimed at derailing the GNU, etc.

ZANU-PF at their National Congress at the end of last year instructed President Mugabe and ZANU-PF negotiators "to ensure that all outstanding issues, once agreed, must be implemented concurrently. This means there should be no movement on the concerns of the

MDC formations without corresponding and simultaneous redress of ZANU-PF's concerns such as the illegal Western sanctions, Western-funded pirate radio broadcasts", etc. (Without some reform legislation, which is not yet in the pipeline, it does not look as if governments imposing selective "sanctions" will lift them, and now that ZANU-PF has now clearly made this a condition for concessions, it leaves the Inter-Party negotiations trapped within a somewhat vicious circle.)

Other GPA articles on which the nation thought there had been agreement, such as the land audit and the formation of the National Economic Council (NEC), have not been implemented and now also seem to be subject of dispute. Agriculture Minister Joseph Made (ZANU-PF) said there could be no land audit until sanctions have been lifted because sanctions have prevented new farmers from becoming productive. And there has been delay and confusion as to who is responsible for the setting up of the NEC.

SADC Update

SADC Foreign Ministers met on 7th January and were briefed by Mozambique President, Armando Guebuza, chairperson of the Security Organ Troika, on progress in the Zimbabwe Inter-Party negotiations. The official communiqué issued after the meeting contained only one sentence on Zimbabwe: "noted with appreciation the efforts of SADC Facilitator in assisting Zimbabwe to fully implement the Global Political Agreement (GPA)". Press reports afterwards, however, quoted the Mozambique Foreign Minister as saying that nobody at the meeting was happy with the pace of negotiations in Zimbabwe. "We want the talks to conclude as soon as possible." The Organ Troika met with the SADC Summit Troika on 14th January. The official communiqué issued after this Summit again had only a single sentence on Zimbabwe: "Summit also noted with appreciation the efforts of SADC facilitator in assisting Zimbabwe to fully implement the global political agreement and urged the parties to implement decisions made."

AU Summit 25th January to 2nd February, Addis Ababa

The AU Heads of State and Government will meet 31st January - 2nd February. This is preceded by meetings of the Permanent Representatives Committee and the Executive Council. The theme of the Summit is "Information and Communication Technologies in Africa: Challenges and Prospects for Development". Among items to be considered are the report of the AU's Peace and Security Council on the State of Peace and Security in Africa, and Malawi's candidature for the AU chair, which is endorsed by SADC, but being contested by President Gaddafi, who wants to retain the chair for a second term. ZANU-PF has said that it will be taking the "sanctions" question to the AU Summit.

Source: Veritas

Payback time beckons for ministers

HARARE-Four government ministers face court action for their alleged roles in the abduction and torture of several political and human rights activists.

The High Court has already set down dates for the pre-trial conferences.

However, the abductees' lawyers have applied for a postponement of the pre-trial conferences and are seeking a consolidation of related matters so that they can be heard at once.

"We are considering a consolidation of related matters so that those closely related are heard at the same time," said Alec Muchadehama, one of the abductees' lawyers.

The 17 political and human rights activists are demanding over US\$20 million in damages from four government ministers and top security commanders whom they hold responsible for their abduction and torture last year.

The activists want Home Affairs co-ministers Giles Mutsekwa, an appointee of Prime Minister Morgan Tsvangirai and ZANU PF's

Kembo Mohadi, together with Justice Minister Patrick Chinamasa and former State Security Minister Didymus Mutasa to pay damages because they were in charge of agents involved in the abduction and torture.

State security agents abducted and held the 17 in various secret locations between October and December 2008. The State is charging them with sabotage, banditry, terrorism and plotting to unseat the previous government led by President Robert Mugabe.

The activists filed their lawsuit with the High Court last July and are demanding US\$1.2 million each for abduction and torture.

Besides the ministers, the abductees are demanding that Happyton Bonyongwe, the Central Intelligence Organisation Director General, Police Commissioner General, Augustine Chihuri, and Zimbabwe Prison Service chief, Paradzai Zimondi be held liable for presiding over their three-month ordeal.

The lawsuit also targets middle ranking officers allegedly involved in the actual abduction and torture. These are police Senior Assistant Commissioner Nyathi, Chief Superintendent

Crispen Makendenge, Detective Chief Inspector Mpofo, Chief Superintendent Peter Magwenzi, Detective Chief Inspector Elliot Muchada, Superintendent Josh Shasha Tenderere, Assistant Inspector Mudandira, Superintendent Regis Takaitei Chitekwe, Detective Assistant Inspector Maria Phiri, Detective Inspector Chibaya, Detective Muuya, Senior Assistant Commissioner Chibvu of the Prison Services, and a retired army brigadier, Asher Walter Tapfumaneyi, who is now the Assistant Director of the CIO External Branch.

Each of the activists is demanding US\$500 000 in damages for unlawful abduction, enforced disappearance, unlawful detention incommunicado (isolation), unlawful arrest and unlawful deprivation of liberty; US\$100 000 for assault; US\$300 000 for torture, pain, shock, suffering and psychological trauma, contumelia and loss of amenities of life; and US\$300 000 for malicious prosecution.

The activists include freelance photo-journalist Anderson Manyere, Concilia Chinanzvavana, her husband Emmanuel Chinanzvavana, Collen Mutemagau, Kisimusi Dhlamini, Audrey Zimbudzana, Zakaria Nkomo, Gandhi Mudzingwa, Fidelis Chiramba, Broderick

Takawira, Mapfumo Garutsa, Pascal Gonzo, Tawanda Bvumo, Chinoto Mukwezaramba, Pieta Kaseke, Regis Mujeye, and Violet Mupfuranhewe, who was abducted together with her two-year old son Nigel.

The abductees had to be hospitalised following the torture. The torture included severe beatings, being thrown into freezers for lengthy periods, and other inhumane acts such as pouring ice-cold water onto the genitals of abductees and stripping naked a male 73-year-old abductee in front of female abductees.

The case could encourage hundreds of other Zimbabweans who have suffered state sponsored abduction and torture to seek civil redress in attempts to reduce impunity and contribute towards national healing.

All the abductees are awaiting a Supreme Court determination on their applications seeking a permanent stay of prosecution on the basis that the torture and abduction violated their basic human rights as enshrined in the Constitution of Zimbabwe.

Visually impaired score

HARARE-The Supreme Court has made a landmark ruling which ensures that all visually impaired Zimbabweans can be assisted to vote by the people they would have chosen and that there is a voters' roll which is friendly to them.

Last week, the Supreme Court declared a section of the Electoral Act, which prescribed that visually impaired people would vote in the presence of a police officer, a presiding officer and Zimbabwe Electoral Commissioners (ZEC) officers unconstitutional, and null and void.

The ruling by the Supreme Court led by Chief Justice Godfrey Chidyausiku followed an application by visually impaired human rights activist Masimba Kuchera and five others, who had asked the court to declare Section 60(1)(a) and (b) of the Electoral Act (Chapter 2:13), unlawful and a contravention of the Constitution of Zimbabwe.

Jeremiah Mutongi Bamu, Kuchera's lawyer and a member of Zimbabwe Lawyers for Human Rights had filed the application in the Supreme Court in June 2008 after the March election in which his clients said they had been forced to divulge their political allegiance to individuals who were alien to them.

"I was advised that my voting preferences had been recorded on the ballot papers," said Mathando Newton, one of the applicants of his experiences during the March 2008 election in his affidavit to the Supreme Court.

"I was however not satisfied and asked them (ZEC officials) to tell me the political party against whose candidate they had marked my vote. It is then that I got the shock of my life; they told me that my vote had been recorded against the candidate for ZANU NDONGA! My true intention was to vote for a ZANU PF candidate. I advised (ZEC) officials of this position, highlighting that my political preferences had not been properly recorded and refused to acknowledge the ballot so cast as a true reflection of my political preference. I therefore demanded that I be allowed to cast my vote on my own."

"Another ballot paper was produced. I demanded that (ZEC) officials indicate to me the spaces where I was expected to put my mark and the name of political party of each candidate against the space to place my mark. I was denied this opportunity," said Newton.

He added: "In frustration, I walked out. It became clear to me that I was being effectively denied the chance to freely express my political will in privacy as had been enabled persons

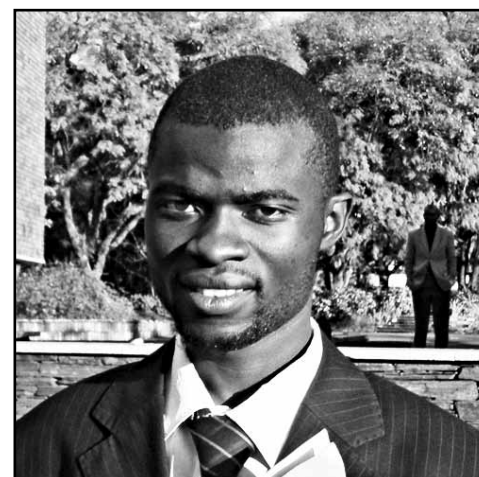
of other status. To this day, I am not aware of what became of those ballots I refused to acknowledge. From that day, I saw no point in voting under the present electoral regime as it unduly restricts my fundamental rights."

In his founding affidavit Kuchera said given that visually impaired people would have divulged their political preferences, ZEC officials in the post election era could victimise them if they belong to different parties. Kuchera, said: "The police force is also fast losing credibility as an impartial and non-partisan body given the open utterances by some high-ranking police officials reported in the media, that they would never salute puppets."

He added: "It is common cause that the post election era is normally volatile with incidences of politically motivated violence being witnessed. (On 28 March, 2008) I advised (election officials) that I would still cast my vote but under protest. I was compelled to disclose to him (police officer) the candidates I wished to vote for. I have never known this presiding officer and still do not know him. I also do not know the other persons before whom I made my political preferences known. Perhaps I even come across them on occasion and maybe they even boast to others that they



All smiles Masimba Kuchera after the Supreme Court victory



Lawyer Jeremiah Bamu

assisted me to vote and even know whom I voted for. I only thank God that there have been few if no reported cases of post elections retribution in my constituency, otherwise I would have feared for my security as we speak." Minister of Justice Patrick Chinamasa had opposed Kuchera's application arguing that

ZEC had no financial capacity to implement any alternative form of voting, especially for blind voters as that would include a Braille ballot system.

Other applicants were Shelter Chizhanje, Simon Mvindi and Man'on'o Chorus.

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Magisterial scandal

"On 28 January the farmers who had been ordered to vacate the farms served the High Court order on Mr Zuze. The (High Court) order suspended the operation of his (Zuze's) ruling for eviction. It was after service of the order was effected on Mr Zuze that the police arrested Gifford and Joubert. The cause for their arrest is that they were in contempt of court: contempt in that they tried to have a notice of appeal issued by the Clerk of Court, tried to serve a letter on the Magistrate and caused a court order to be served on the Magistrate," said Maanda

Maanda said Gifford and Joubert - arrested on Thursday - were now in police custody in Mutare after being transferred from Chipinge. Prosecutors allegedly refused to deal with the matter in Chipinge, due to the involvement of the resident Magistrate.

The State then failed to produce the two farmers in court in Mutare on Friday because the police vehicle transporting them to Mutare had no tyres. Efforts to have them appear in court on Saturday failed after police detectives told Maanda that they were not ready because they were still investigating the matter and still going through their statute books to find a "proper charge".

The lawyer expressed concern over the abuse of the justice delivery system in cases involving farm ownership wrangles. Maanda said that more worrying was the fact that Zuze is a beneficiary of a farm belonging to one of the farmers whose eviction he ordered, meaning he was both a player and referee in the case. Maanda said it was a grave assault on the proper administration of justice for Zuze to preside over a case in which he had a clear interest.

Zuze's instruction for Gifford to be arrested for delivering a High Court order unfavourable to the Magistrate was also a serious dent to the integrity of Zimbabwe's judicial system, Maanda said.

It also reinforces the perception that judicial officers who have taken up farms have compromised their independence.

Zuze is no stranger to controversy-in 2009 he convicted and sentenced Hon. Mathias Mateu Mlambo and Hon Meki Makuyana, the two MDC members of Parliament whose respective constituencies are in Chipinge. The two have since been suspended from Parliament by Austin Zvoma, the Clerk of Parliament pending the determination of their appeals in the High Court.