

The LEGAL MONITOR

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COST-FREE

Coup

HARARE-President Robert Mugabe has once again unilaterally stripped Movement for Democratic Change (MDC) ministers of powers and empowered his appointees further widening fissures in the transitional government.

In the latest Extraordinary Government Gazette released last week, Mugabe made his blue-eyed boy, Patrick Chinamasa the most powerful minister in the shaky regime when he gave the Justice and Legal Affairs Minister 94 Acts of Parliament to administer.

Chinamasa, one of Mugabe's most trusted lieutenant on legal matters will oversee the

Zimbabwe Electoral Commission Act, Zimbabwe Human Rights Act, Political Parties Finance Act, Labour Act, the Judicial Services Act, High Court Act and Electoral Act, among many others. The Justice Minister is known for his unilateral stunt of pulling Zimbabwe out of the SADC Tribunal.

The embattled leader then allocated only three Acts to MDC's Eric Matinenga, the Minister of Constitutional and Parliamentary Affairs. Matinenga's ministry was once part of the Ministry of Justice, Legal and Parliamentary Affairs portfolio - before the inception of the transitional government which was - headed by Chinamasa.

Mugabe usurped all powers from Information and Communications Technology Minister Nelson Chamisa leaving him without any Act to administer. Previously, Chamisa had a fight with Mugabe's ally Nicholas Goche whom he accused of encroaching into his ministerial mandate. Goche heads Transport Ministry which has been broadened by Mugabe to encompass communications. Mugabe allocated the controversial Interception of Communication Act, to his dreaded Central Intelligence Organisation (CIO) based in his office, thus controlling the spying equipment reportedly sourced from China.

Prime Minister Tsvangirai's MDC has dismissed the seizure of ministerial powers because "there was no consultation" on the changes to the allocation of ministerial mandates.

"This is day-light robbery. There was no consultation at all," said Chamisa, the MDC spokesperson. "The Prime Minister saw it (the gazette) for the first time on Friday."

The re-allocation of ministerial mandates comes hardly a few weeks after President Mugabe's secretary Misheck Sibanda wrote to Cabinet ministers and permanent secretaries instructing them to stop reporting to Prime Minister Tsvangirai, but to Vice Presidents Joice Mujuru and John Nkomo. The communication has since been recalled.

The latest move has further widened the divide between the partners in the transitional government as President Mugabe continues to act unilaterally in contravention of the Global Political Agreement (GPA), which provided the basis for the formation of the transitional authority.

According to the GPA Mugabe and Tsvangirai should agree on all senior

government appointments and decisions before implementation.

Some of the Ministers who have no Acts to administer include, from MDC, Heneri Dzinotyiweyi, Science and Technology and Joel Gabuza, State Enterprises and Parastatals and from Deputy Prime Minister Arthur Mutambara's party, Priscilla Misihairabwi-Mushonga, Minister of Regional Integration and International Cooperation.

The battle for the control of key state firms in the country's coalition government has created rifts in the 13 month-old fragile power sharing deal entered by President Mugabe and Prime Minister Tsvangirai.

The power sharing arrangement has offered the best hope of plucking Zimbabwe from a deep recession and a political crisis that had fanned electoral violence since 2000, but several disagreements between President Mugabe and Prime Minister Tsvangirai have kept investors nervy.

Added Chamisa: "Just looking at my ministry, you can tell that ZANU PF has taken a ministry from the MDC. We cannot even call it a department. We have a serious contravention of the GPA."

Excerpts of the Extraordinary Government Gazette

Hope for Zim farmers

HARARE-On 25 February, South Africa's High Court made a ruling that is both a triumph for the rule of law in southern Africa, and a stern rebuke to Zimbabwe's own High Court.

The South African court was looking at a previously-issued judgment from the Southern African Development Community (SADC) Tribunal, which judgment ruled that Zimbabwe's white commercial farmers were owed compensation for the land seized from them by the government, and that the government's land seizure programme was racist and discriminatory.

The South African High Court decided that the SADC Tribunal's judgment should be recognized and enforced by the South African government, because Pretoria was a party to the treaty that formed the SADC Tribunal, and the Tribunal is

the court for SADC, a regional organisation of which South Africa is a member. The SADC Tribunal's ruling was then officially registered in South Africa.

The SADC Tribunal's judgment found that Zimbabwean farmers were entitled to compensation for the land taken from them. The effect of recognizing this ruling within South Africa is that Zimbabwean government assets located in South Africa-for example, houses owned by the government-may be seized and sold, and the proceeds awarded to the Zimbabwean farmers in compensation. The most likely next step for the farmers' legal team is to identify Harare's assets in South Africa and file court papers to begin the process of seizing, also known as attaching, those assets.

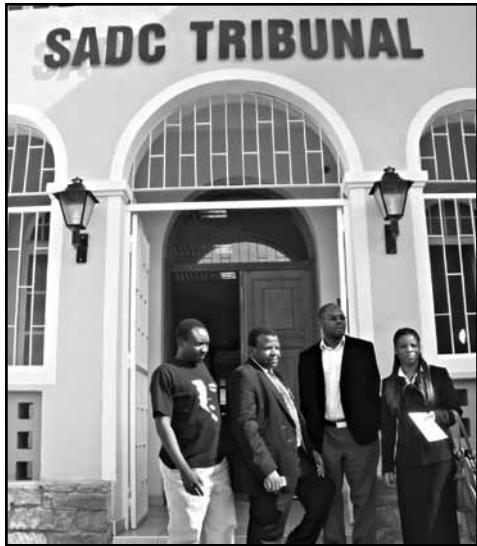
The South African High Court's ruling comes after Zimbabwe High Court Judge Justice Bharat Patel rejected Justice and Legal Affairs Minister Patrick Chinamasa's earlier effort to withdraw Zimbabwe from the SADC Tribunal.

Justice Patel found that the SADC Tribunal indeed had jurisdiction over Zimbabwe and had the legal authority to issue a ruling against the Zimbabwean government.

However, Justice Patel ultimately argued that it would be against public policy to recognise the SADC Tribunal's ruling against the Zimbabwean government, because to do so would undermine the government's land reform programme.

The impact of South African High Court's decision could be far-reaching. Actions could now be brought in the courts of other SADC Member States by lawyers seeking to register the SADC Tribunal's judgment against Zimbabwe.

If successful, lawyers could then move to freeze Zimbabwean government assets in those countries as well, putting more pressure on Zimbabwe to comply with the Tribunal's judgment.



ZLHR board members Hillary Garikai and Tino Bere, SADC Lawyers Association President Mabvuto Hara and Maureen Kondowe of Malawi pose for a photo outside the SADC Tribunal in Windhoek

Ministry	Political party	Number of Acts administered
Justice and Legal Affairs	ZANU PF	94
National Housing and Social Amenities	MDC	2
Local Government, Urban and Rural Development	ZANU PF	32
Transport, Communications and Infrastructural Development	ZANU PF	19
Public Works	MDC	4
Energy and Power Development	MDC	4
Science and Technology Development	MDC	Nil
State Enterprises and Parastatals	MDC	Nil
Information Communication Technology	MDC	Nil
Regional Integration and International Cooperation	MDC-Mutambara	Nil
Agriculture, Mechanisation and Irrigation Development	ZANU PF	41
Home Affairs	Co-ministered MDC and ZANU PF	40
Constitutional and Parliamentary Affairs	MDC	3
Finance	MDC	56

Acquitted

BULAWAYO-Magistrate Sheila Nazombi has acquitted Beitbridge Prosecutor Tarcisius Moyo leaving the Director of Public Prosecutions in the Attorney General (AG)'s Office Florence Ziyambi with egg on her face.

Moyo had been on trial on charges of criminal abuse of office for allegedly admitting Hudson Mhlanga, who is accused of kidnapping and assault, to bail when he was allegedly not a suitable candidate last November. State prosecutors accused Moyo of receiving a bribe to admit Mhlanga to bail.

But Magistrate Nazombi acquitted Moyo last Friday after ruling that the prosecutor had only acted in the scope and course of his duties. The Magistrate said Moyo's actions did not amount to a criminal offence.

Ziyambi, the complainant in the case who also testified against Moyo had alleged that the prosecutor had ignored her earlier instructions not to admit Mhlanga to bail. But AG Johannes Tomana has previously stated that prosecutors are free to use their discretion in either consenting to or opposing bail as long as their decision is premised on facts and the law.

Magistrate Nazombi said there is no evidence to prove that Moyo connived with Sibanengi Ncube, a prosecutor based in Harare, who sent a letter consenting to bail to Moyo to show favour on Mhlanga.

The Magistrate said Moyo's actions cannot be said to be criminal as he acted on instructions from his superiors.

Moyo is just one of several judicial officers who have been persecuted and charged with criminal offences such as "committing criminal abuse of duty as a public officer", which has had a chilling effect on their ability to execute their professional duties without fear or favour. Recently, a Rusape Magistrate Hosea Mujaya set free Livingstone Chipadze, the Mutare Provincial Magistrate who was arrested for admitting Deputy Agriculture Minister-Designate Roy Bennett to bail.

Chipadze had been charged with criminal abuse of office after he allowed Bennett to deposit bail

and comply with other conditions as set out by the High Court last year.

Human rights lawyers say the coalition government should immediately take steps to deal proactively with offensive legislative provisions and malicious administrative practices

implemented by the police and the AG's Office to undermine the work of judicial officers. These steps include, but are not limited to the establishment of an independent parliamentary committee to expeditiously, transparently and publicly investigate the continued use and abuse

of provisions of the Criminal Law (Codification and Reform) Act and other legislation by the Office of the AG and other state organs, including provisions relating to "obstruction or defeating the course of justice" and "committing criminal abuse of office".

Pains of a pupil

BULAWAYO-Children as young as eight gather under a tree-not to find cover from the blazing sun-but to attend class. The sheer determination to access education has forced many urban children countryside to resort to under the tree classes.

Classroom blocks lie empty because teachers will only return there when the government pays them better salaries. For a-dollar-a-child, teachers have found backyard trees a convenient tool for their trade. For the students, there is no choice. Learning has to go on-with or without government support.

"We have no choice and this is the only available option so that our children can be educated," said one parent.

Here in Bulawayo, most public schools are operating without teachers, who have transferred classes to their homes in return for some "salary".

A visit to Old Magwegwe revealed that it was learning as usual for some children, who do not seem disturbed by the environment they are learning under.

The teachers claim that they are only responding to requests from the children's parents to assist them to educate and empower their kids.

But a concerned parent from Old Magwegwe said the coalition government should seriously

consider addressing the teachers' plight to ensure that they deliver services effectively and benefit all children in need of affordable education.

"Most parents get lower incomes than teachers but they still have to pay teachers incentives and school fees so that their children can be educated," said a parent who identified herself as MaNcube.

Teachers together with other civil servants have been on strike since last month after the government failed to meet their demands of a substantial hike in their salaries.

The civil servants have rejected the government's offer to increase their uniform salaries of \$150

per month, which does not cover basic living expenses by between \$7 and \$21 dollars and are demanding to be paid \$630.

The strike is a serious blow to the year-old fragile coalition government, which says it has no financial resources to increase the government employees' wages.

The job action is the first serious setback that the government has faced since the formation of the power-sharing government which is tasked with stabilising the country's comatose economy and restore political stability.



Class in session in Old Magwegwe, Bulawayo

POSA: Who needs it?

HARARE-Chris Mutangadura (1), the chief law officer in the AG's Office defends the continued use of the Public Order and Security Act (POSA) during a debate entitled "POSA: Who Needs It?" organised by the Civil Society Monitoring Mechanism (CISOMM) held last Wednesday at the Book Café in Harare.

Other panelists included WOZA founder and coordinator Jenni Williams (2) and Derek Matyszak (3), a senior researcher at the Research and Advocacy Unit (RAU).

Williams, who has been arrested 33 times and charged with contravening POSA and other repressive laws advocated for the total repeal of POSA from the country's statutes.

Matyszak said the police do not need any form of training for them to realise that they must not torture suspects as part of their investigations but just need to fully acquaint themselves with the laws. Biko (4) contributes during the debate.



Army threatens democracy

HARARE-The deployment of soldiers and police to rural and peri-urban areas to harass and intimidate civilians ahead of the constitution making outreach programme shows how President Robert Mugabe intends to subvert the constitution making programme, a respected democracy organisation says.

The Institute for Democratic Alternatives in Southern Africa (IDASA) said in its latest overview of Zimbabwe's transitional government that the constitution making process was under threat from hardliners who wanted to impose their views. A new constitution is regarded as key to the creation of conditions for free and fair elections.

IDASA said ZANU PF's insistence on foisting the Kariba Draft on Zimbabweans shows how the party "has no intention of assisting this process, nor a willingness to really share power with the MDC".

"State media continues to hamper efforts to educate and inform the nation about the constitution making process by not publishing relevant information to assist with outreach programmes. Plain clothed army and police continue to threaten MDC members in peri-urban areas when holding discussions around the drafting of a new constitution," noted IDASA.

WOZA unhappy with Mutsekwa

HARARE-Women activists are angry that a meeting with the Home Affairs ministry only confirmed their worst fears—that the police will continue pouncing on them until they start respecting harsh security laws.

Women of Zimbabwe Arise (WOZA) leaders said their meeting with co-Home Affairs ministers, Kembo Mohadi and Giles Mutsekwa last week over continued police harassment failed to resolve sticking issues.

Mutsekwa, a Movement for Democratic Change appointee, reminded the activists that failure to adhere to the Public Order and Security Act (POSA) would attract police action, according to a WOZA update of the meeting.

WOZA said Mutsekwa "lectured" them on the need for peace and tranquillity. "We have to correct the wrong impression that we are a lawless country. We ask you to start to obey the country's laws so that investors start coming in and we can all benefit. There is a bigger picture than your issues," WOZA quotes Mutsekwa as saying.

"With those comments they (Mutsekwa and Mohadi) then declared that if WOZA notify police before any demonstrations, both ministers would not be found wanting in personally disciplining any police excesses. Implicit in this statement is

the threat that if WOZA continues to exercise their constitutional rights to freedom of expression and assembly and their exemption under the POSA, they will continue to allow the police to ignore clear instructions for dispersing a procession covered under law," commented WOZA.

Ironically, Mutsekwa's colleague in the MDC, Innocent Gonese is sponsoring a Private Members' Bill to amend POSA because the law is too repressive.

Hundreds of MDC and rights activists have been arrested under POSA in the last eight years for exercising their democratic right to protest against unjust laws and bad governance.

According to the WOZA update of the meeting, Mutsekwa attributed Zimbabwe's international isolation to WOZA's regular street demonstrations. Worryingly, WOZA said, the ministers failed to address the issue of armed police brutalising innocent, peaceful protestors demanding nothing more than equal rights and access to basic services such as health and education.

"The ministers advised that they had called the meeting after receiving numerous reports from law enforcement agencies regarding the activities of WOZA. Minister Mutsekwa opened

by advising that the motive of the meeting was to "bring WOZA and the ZRP to equal terms, restore harmony and to remove discord and suspicion"

The minister went on to mention that the power sharing government is negatively regarded locally and internationally as an oppressive government as a result of WOZA's negative publications and that this is affecting their ability to attract investors," said WOZA.

WOZA re-stated its legal position as thus: "WOZA's legal opinion remains as follows: the Public Order and Security Act currently provides the law for the maintenance of public order and security in Zimbabwe. Under Section 2 of the Act, a public gathering is defined as a "public meeting or a public demonstration". Sections 23, 24 and 25 outline the procedure to be followed by a convener who intends to organize public demonstrations as defined under the Act. At the end of the Act appears a schedule of gatherings to which sections 23, 24, 25. Of particular relevance to this situation is paragraph (i) of the schedule which excludes "any club, association or organization which is not of a political nature and at which the discussions and matters dealt with are not of a political nature" from having to give any notification. WOZA therefore clearly falls within the provisions of section (i) of the schedule and is not obliged to give notice whenever it has its peaceful processions on issues which are non-political in nature."

ZimRights/ ZLHR concerned with rising threats



HARARE-Despite what was thought to be the dawn of a new era for human rights defenders with the formation of a Government of National Unity, the last three months have seen an escalation in the number of threats, intimidation and harassment levelled against members of civil society.

Members of the ZimRights board last week received a series of text messages warning them against pursuing their mandate to conduct civic education in rural areas on the constitution making process. The messages were sent from the same Telecel mobile number, which is now unreachable. Nunurai Jena, ZimRights Regional Chairperson for Mashonaland West received a message saying, "If we give you a task to ask your ZimRights colleagues to slow down and forget about the constitution making process will you do that or else...? Just comply."

Chitungwiza regional chairperson, Netsai Kaitano's message read, "Chipositori nekodzera, kana matongerwo enyika zvinopindirana papi? (How are apostolic faith and rights or politics linked?) Have you forgotten the pain of those beatings. Bidi and Tsunga are gone, Pelagia, Ok, Phulu and Tshuma won't be there anymore, when we will come for you."

Jabulisa Tshuma, the organisation's treasurer's message said, "Mr Treasurer Tshuma, who are your sponsors? You are all over the country. Are you turning ZimRights into a political party? What is the motive of your donors?"

National Director, Okay Machisa who, two weeks ago, received a threatening email from

a person claiming to be Dzapasi Mumunda received a message written, "You enjoy flying in and out of the country demonizing your country, why don't you go and stay there? They monitor, soon you will all stay out." In the email, he had been warned that people from Mumunda's office have been tasked with bringing him down and he should be careful, especially at home. ZimRights has since reported the threats to the Central Police Station. But these threats have not been isolated against ZimRights only.

Trade unionist and Secretary-General of the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ), Getrude Hambira was forced into due to fears for her safety.

Hambira together with the workers union's leadership were summoned by the dreaded Joint Operations Command (JOC) and were taken to task over a documentary entitled "House of Justice" and a report titled "If something is wrong" documenting the brutality surrounding the land reform programme. GAPWUZ leaders were warned that if the report and documentary were ever used or presented to the SADC Tribunal, GAPWUZ would be held accountable.

The security agents also arrested the GAPWUZ Assistant General Secretary Gift Muti and President Manjemanje Munyanyi and searched the GAPWUZ offices looking for "information materials," last Friday.

The continued existence of JOC violates Article X111 of the Inter-Party Political Agreement (IPA) on State Organs and Institutions, which binds the transitional coalition government to ensuring that security forces restrict themselves to their constitutional mandate. This monster should urgently be dismantled.

In Bindura, some facilitators belonging to Civic Education Trust (Civnet) namely Taurai Chigunwe, Tinashe Madzimbamuto and Faustino Mukakati were arrested last week for allegedly holding a public meeting.

Last month Mr Sanyika, a ZANU PF councillor for Nhekiwa ward in Uzumba together with a group of some ZANU PF youths disrupted an outreach meeting convened by CZC claiming that it had not been sanctioned by their political party. The councillor and the youths also intimidated, harassed and threatened CZC youth committee members Tichaona Masiyambiri and Oscar Dhlwayo and CZC intern Edwin Sithole who had organized the outreach programme.

In Chimanimani West some members of the Police Intelligence Special Investigations (PISI) department harassed and interrogated a team of doctors from the Counselling Services Unit (CSU), who were conducting a clinic workshop at Nhedziwa Business Centre after alleging that their outreach programme was political.

On Tuesday 2 March 2010 police in Mutare arrested and detained three Zimbabwe Congress of Trade Unions (ZCTU) employees, who were attending the labour union's Regional Women's Advisory Council's civil and legal training in the eastern border city for five hours.

Security agents should strictly observe the principles of the Rule of Law and should adhere to the laws and regulations governing their operations. ZLHR and ZimRights calls upon the responsible authorities including the Ministry of Defence to penalise these elements without fear or favour.

ZimRights and ZLHR have also taken note of the renewed rhetoric against NGO's emanating from some ministers and Governors accusing some NGO's of interfering in the stalled constitution making process.

In January and February some Woza members in Harare and Mutare were arrested and detained for participating in peaceful protests before the co-Home Affairs Ministers summoned WOZA leaders on Monday 01 March 2010 and questioned them about their activities which they alleged were scaring away potential investors from Zimbabwe.

The police and some non state actors such as ZANU PF youths have also intensified their crackdown on journalists. Freelance photojournalist Andriison Manyere has since January been either seized or arrested three times during the course of his legitimate work. Besides Manyere, another freelance journalist Stanley Kwenda fled the country after he was allegedly phoned and threatened with death by a senior police officer.

These attacks on bona-fide journalists are a serious threat to media freedom and the right of journalists to conduct their lawful professional duties without fear or hindrance from any quarters.

That civil society organisations are executing their legitimate and legal mandate of protecting and defending the inalienable rights and freedoms of citizens through such programmes as education,



legal aid and information dissemination is undeniable. As such the organisations will not brook any attempts by rogue elements bent on perpetuating the suffering of Zimbabweans by intimidating us into silence and inaction.

Our conscience remains clear and we are convinced that these organisations and individuals are doing a necessary service to the nation as we stand against any acts of commission and omission that are bent on dehumanising our people, whatever their social status or other qualification.

Though not the best, we believe in the GPA the inclusive government has a working platform that, if followed, lays a reasonable foundation on which to start building a new Zimbabwe in which Zimbabweans can be proud of.

However, the elements that continue to issue out threats and demonising well-meaning citizens and institutions continue to cast an ominous shadow over the letter and spirit of the GPA.

We remain committed to fulfilling our mandates and will not be deterred by forces that are working to rob Zimbabweans of their right to enjoy and celebrate their humanity.

We urge the inclusive government and particularly the co-Home Affairs Ministers and the Police Commissioner-General to unequivocally guarantee the safety of all these human rights defenders and to assure them of their security pending full investigations into the alleged threats.

SADC symposium in pictures

WINDHOEK-More than 40 senior representatives from bar associations, law societies, judges and other law-based organizations attended the SADC symposium on the administration of justice held under theme “Interrogating the Role of Regional Economic Communities in Protecting and Promoting Human Rights,

the Case of the SADC Tribunal”. The two-day symposium evaluated the effectiveness of the SADC Tribunal and assessed its implications on the enforcement of the rule of law in the region.



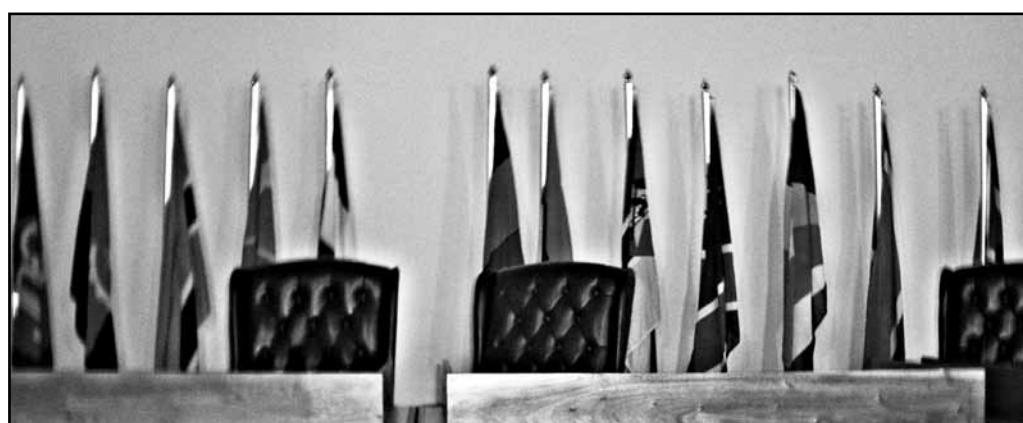
ZLHR board member Precious Chakasikwa flanked by Harare lawyers Vimbai Nyemba (left) and Petronella Takavadini



ZLHR board chairman Andrew Makoni



SADC Tribunal Judge Justice Luis Antonio Mondlane makes a contribution



Inside the SADC Tribunal courtroom



Kucaca Phulu, ZLHR regional manager for Matabeleland satellite office



Some of the regional lawyers follow proceedings



Lloyd Kuvheya of Southern African Litigation Centre stresses a point



Professor Nico Horn, the Dean of the Faculty of Law, University of Namibia delivers the keynote address



A man walks past a Robert Mugabe Avenue sign in Windhoek