

The LEGAL MONITOR

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19 July 2010

A newsletter published by Zimbabwe Lawyers for Human Rights for members & human rights defenders

COST-FREE

Edition 54

ZESN hails lawyers for defeating POSA

HWANGE-A local electoral reform body has paid tribute to Zimbabwe Lawyers for Human Rights (ZLHR) for securing the acquittal of its employee, who had been on trial for contravening Section 25 of the Public Order and Security Act (POSA) by convening a public meeting without notifying the police.

Magistrate Munamati acquitted Lovemore Ndhlovu, a Zimbabwe Election Support Network (ZESN) staff member on Wednesday after his lawyer Lizwe Jamela of ZLHR applied for discharge at the close of the State case. This was another kick in the teeth of the transitional coalition government, which continues to use harsh security laws to suppress gatherings and stifle debate among citizens.

Jamela told *The Legal Monitor* that Magistrate Munamati ruled that Ndhlovu had simply facilitated and not convened the meeting which was held in Dete area last October.

"The Magistrate said that if anyone was to be charged it should be the local Chief who convened the meeting," said Jamela.

Ndhlovu had been on trial after he was charged with contravening POSA, one of the restrictive legislations on the country's statutes which the police and state security agents have abused to ban meetings and rallies.

In a statement, ZESN praised ZLHR for securing the acquittal of Ndhlovu, who during his nine months remand period had to report to the Bulawayo Central police station, initially weekly and then once in a fortnight.

"ZESN would also like to thank the Zimbabwe Lawyers Human Rights (ZLHR) who represented Lovemore throughout the case and for a sterling job in ensuring that he was rightly acquitted of the allegations leveled against him.



Lizwe Jamela

ZESN continues to call for the recognition of freedom of association and the upholding of

human rights, good governance and democratic elections in Zimbabwe," said ZESN, a coalition of 36 non-governmental organisations which co-ordinates activities pertaining to elections.

Already, Parliament is expected to pass a Private Members Bill seeking to amend the draconian security law, which continues to be relied upon by the coalition government of President Robert Mugabe and Prime Minister Morgan Tsvangirai to restrict political activity by pro-democracy groups and individuals.

POSA, a revised and strengthened version of the colonial Law and Order Maintenance Act (LOMA), regulates political gatherings, forces individuals and groups to notify police before any gathering, and penalises one's failure to carry identity documents among other things.

Triumphant lawyers

HARARE-Lawyers representing students in three of the country's ten provinces emerged victorious last week after the courts acquitted some of the students.

First to be acquitted on Tuesday were 21 students from Bindura University of Science Education (BUSE), who were accused of contravening Section 37 of the Criminal Law (Codification and Reform) Act by participating in a gathering with intent to cause a breach of the peace or bigotry after they allegedly staged a demonstration at the institution.

The State alleges that the students, who were arrested in January, contradicted the university authorities and misrepresented to other students by claiming that the Ministry of Higher Education had resolved that university students should be allowed to sit for their examinations but would not get their results until payment of the fees.

The State said the students' claims contradicted the university authorities' position.

The Bindura Magistrate acquitted the students after their lawyer Tawanda Zhuwarara of Zimbabwe Lawyers for Human Rights (ZLHR) applied for discharge at the close of the State case. The Magistrate said State witnesses failed to directly implicate 21 of the 28 students charged.

However, judgment was reserved on the remaining seven students to 30 July 2010.

In Bulawayo, 10 National University of Science and Technology (NUST) students, who were also accused of breaching Section 37 of the Criminal Law (Codification and Reform) Act by participating in a demonstration held at the institution in April 2009, were removed from remand after their lawyer Lizwe Jamela of ZLHR applied for freedom.

Two of the students, Kennedy Chizama and Christopher Hwacha, who have since graduated from the institution, were issued with warrants of arrest by Bulawayo Magistrate Rose Dube after they failed to appear in court.

On Thursday, Harare Magistrate Archie Wochiunga removed from remand two University of Zimbabwe (UZ) students, Justice Chikanya and Tawanda Katsuro, who had been charged with organizing and leading a demonstration against high tuition fees at the institution.

Chikanya and Katsuro were arrested on 3 February, 2009 and charged with contravening Section 36 (1) (a) of the Criminal Law (Codification and Reform) Act (Chapter 9:23).

The State alleged that the two students acting in concert with other students forcibly disturbed the peace, security or order of the public or invaded the rights of other people to a serious extent by

throwing stones at buildings and motor vehicles intending such disturbances or invasions or realising that such disturbance or invasion may occur.

It was alleged that Chikanya and Katsuro addressed UZ students and mobilized them to demonstrate against the fees charged as set by the authorities. The alleged value of the damaged property was US\$5 000, being window panes and a Toyota Corolla belonging to a non-governmental organisation.

But on Thursday, Magistrate Wochiunga removed the students from remand and ordered the State to proceed by way of summons if it intended to continue with the matter.

This was after the State had filed an application seeking to postpone the trial to 26 August, 2010, arguing that it had just received the docket from court 12, and that it wanted to clarify some issues from the Investigating Officer. The State also sought to argue that the Magistrate in court 12 and the public prosecutor had recused themselves in the trial of the students.

But the students' lawyers Jeremiah Bamu and David Hofisi of ZLHR opposed the application and exposed the State's misrepresentations since no Magistrate or Public Prosecutor had officially recused him/ herself as far as the defence was concerned.

The lawyers pointed out that the matter had been appearing before the same Magistrate (Archie Wochiunga) since the first day that the students were brought to court on 8 June 2010 for trial which was postponed to 15 July, 2010.

Bamu and Hofisi contended that the matter came as a summons matter, indicating that the State was now ready for trial and there was no reason for further delay. If at all the State wanted anything clarified by the Investigating Officer, it should have done so already, especially as the Investigating Officer was a State witness according to the State papers that were given to the defence lawyers.

The lawyers also pointed out that the students had a right to a fair trial within a reasonable time and this right was being violated by the continuous postponements, especially when the State was clearly not ready to proceed with the matter. They argued that as students they needed to concentrate on their studies with a free mind and not be pre-occupied with any other thoughts of court process hanging over their heads.

This resulted in Magistrate Wochiunga agreeing with the defence lawyers' submissions, and he ordered State prosecutors to proceed by way of summons should they still be inclined to proceed with the matter.



HUMAN RIGHTS

Parliament Watch
13 July 2010

General Commentary on the Legislative Agenda of the 3rd Session of the 7th Parliament of Zimbabwe

Zimbabwe Lawyers for Human Rights (ZLHR) welcomes the opening of the 3rd Session of the 7th Parliament of Zimbabwe by the President of the Republic of Zimbabwe on 13 July 2010, wherein the Legislative Agenda was set out.

The proposed legislation which will occupy the minds and energy of legislators encompasses the following:

Amendments to Existing Legislation:

- Electoral Amendment Bill
- Zimbabwe Electoral Commission Amendment Bill
- Criminal Law (Codification and Reform) Amendment Bill
- Mines and Minerals Amendment Bill
- National Incomes and Pricing Bill
- Civil Aviation (Amendment) Bill
- Zimbabwe Examinations and Qualifications Authority Bill
- School Examinations Council Amendment Bill

The following Acts are also proposed to be amended:

- Referendums Act
- Zimbabwe Income Tax Act
- Environmental Management Act

New Proposed Legislation:

- Zimbabwe Human Rights Commission Bill
- Attorney General's Office Bill
- Media Practitioners' Bill (repealing in part the Access to Information and Protection of Privacy Act insofar as it relates to media practitioners and privacy issues)
- Trafficking in Persons Bill
- International Agreements Bill
- Deposit Protection Bill
- Zimbabwe Exploration Corporation Bill
- Energy Regulatory Authority Bill
- Zimbabwe Border Post Authority Bill
- Micro, Small and Medium Enterprises Bill
- Indigenous Languages Bill
- Medical Aid Societies Bill
- Women's Council Bill

PRELIMINARY ISSUES

1. Zimbabweans vote for representatives of their choice who have the privilege of serving the people in Parliament and in policy-making positions within the Executive. This, however, does not dispense with the obligation of policy-makers to consult widely on their proposed and intended policies before submitting drafting instructions to the Office of the Attorney General and thereafter presenting drafts to the Legislature. This has not been done, and must be improved upon in future sessions.
2. It is regrettable that the major part of the Legislative Agenda is something which usually comes as a surprise to the people of Zimbabwe and particularly stakeholders in areas in which legislative measures are intended. It is the sincere hope of ZLHR that, in the future, engagement, consultation and collaboration is widened to ensure not only early acceptance and support of proposed legislation and legislative amendments, but also more comprehensive provisions which address the concerns of such stakeholders and the public at large.
3. The Legislative Agenda is ambitious – more so in light of the fact that the 1st and 2nd Sessions of this Parliament have delivered precious little in the way of meaningful legislative reforms despite the high expectations of the public. In addition, the ongoing constitution-making process, which is in its outreach phase, will have a negative impact in terms of the ability of legislators to deliver in relation to this lengthy Legislative Agenda in light of time constraints.
4. A real danger therefore becomes the fast-tracking of key legislation and legislative amendments, which has been done regularly in the past. ZLHR would strongly urge legislators to refrain from using the fast-track mechanism as it is inimical to public consultation and participation and will produce bad legislation which may be on our statute books for many years to come, and public resentment which will reduce acceptance of the legitimacy of these laws.

COMMENTARY ON SELECT PROPOSALS IN THE LEGISLATIVE AGENDA

Electoral-Related Legislation

ZLHR welcomes the intention to amend the Electoral Act, the Zimbabwe Electoral Commission Act and the Referendums Act.

We however note that such intended amendments – particularly those relating to elections directly – have been agreed by the political parties represented in Parliament during their secret negotiations and have not benefitted from the vital input of the wider society. It is therefore expected that, whilst some positive amendments may emerge, there will be areas which will not have been adequately addressed and others not identified as priorities due to the lack of stakeholder input. This will be a lost opportunity and we call for further consultation and input before the drafts are gazetted.

In relation to the newly-established Zimbabwe Electoral Commission, we strenuously call for stakeholder input and provisions which ensure that the “new” institution is efficient, effective, transparent in its operations, and accountable to the people who it is intended to serve.

We had called in the past, and maintain such call, for a comprehensive audit of all electoral-related legislation, to remedy problems experienced in areas including, amongst others, citizenship and political party financing. Piecemeal amendments are intended to serve party political interests and offer little meaningful reform of elections in their entirety and as they impact on the general population.

ZLHR is mindful that elections in Zimbabwe have become, over the years, a source of national and regional instability and contestation within our society; it is thus imperative that those affected by such processes are assured that the electoral process and institutions have been adequately reformed – and in a participatory manner – so that there is increased public confidence in this critical part of each citizen's life.

A constitutional referendum may be on the horizon in the event that the government-led constitution-making process proceeds with a finalization of the outreach process and timely consideration of submissions and the drafting process. For this reason, it is critical that the utmost consideration is directed to the management of a referendum. Attention should be paid to the shortcomings identified in the previous constitutional referendum, and we strongly encourage that provisions are included which make it mandatory for the will of the people and the outcome of a referendum to be respected.

Media Legislation

ZLHR notes the intention to repeal certain parts of the Access to Information and Protection of Privacy Act – one of the most repressive pieces of legislation ever to have come into the statute books of an independent Zimbabwe – insofar as it relates to the registration of journalists and privacy issues.

However, it is disappointing to note that there is an intention to substitute this with a new Media Practitioners Bill – making it clear that the government stubbornly intends to maintain restrictions and regulation of the media profession.

ZLHR reiterates its call for self-regulation of the media, and insists that the current civil remedies available to individuals and institutions are more than sufficient to ensure proper ethics and conduct on the part of the media.

We further note that no intention is shown to remove provisions criminalizing defamation and existing insult laws, which is regrettable to say the least. We call for these issues to be considered and for more thought to be placed as to the necessity for the Media Practitioners Bill in its entirety.

The intention to produce a national ICT strategic plan is long overdue, and the promises continue to be postponed. ZLHR hopes that this issue, and the required legislation, will be given the prominence and focus that they deserve if Zimbabwe is truly to

become “*a knowledge-driven society*” which allows access to, and dissemination of, diverse information allowing people to participate in civic and national governance processes.

Security/Criminal Law Amendments

ZLHR notes that the Legislative Agenda does not make reference to amendments or repeal of the Public Order and Security Act (POSA). As a Private Member's Bill to amend POSA is currently on its second reading in Parliament, it is our hope and expectation that this Bill will not be opposed and amendments will be approved and enacted in the shortest time possible. However ZLHR maintains its call for the complete repeal of POSA.

It is noted that amendments are to be made to the *Criminal Law (Codification and Reform) Act*, with the aim of “*(incorporating) into the Code the suggestions by members of the public*”. It is difficult to establish from this what these calls have been, and which members of the public have had the benefit of being consulted and their views taken into consideration. We can only hope that some of the provisions which will be done away with will include those relating to criminal defamation, those which replaced similar provisions in POSA, and the insult laws which unduly restrict freedom of expression.

It is also disappointing to note that there is no intention to revisit the Criminal Procedure and Evidence Act in relation to section 121 – which has been abused by the prosecutorial authorities to reverse bail granted by a court of law, and in this way oust the jurisdiction and power of the judicial arm of government. Likewise, section 174 – relating to the offence of criminal abuse of office by a public officer – remains intact and therefore will continue to have a chilling effect on the exercise by public servants of their professional duties and discretion.

Criminal laws have long been used as tools of persecution rather than legitimate prosecution, as well as for political and personal interests. It is therefore imperative that the legal profession, those selectively and maliciously affected in the past, and those still exposed (particularly human rights defenders throughout Zimbabwe) will have a chance to input before any Amendment Bill is gazetted.

Proposed Human Rights Legislation

ZLHR is heartened to note the intention to present enabling legislation for the newly-established Zimbabwe Human Rights Commission. We have presented our submissions to the policy-makers in the past, and we trust that these have been considered.

We expect that the legislation will comply strictly with the Paris Principles, and will enable the Commission to work independently, efficiently, transparently and in a well-resourced manner which does not make them reliant on patronage, as has been a feature in the past with various commissions.

ZLHR further expects to see contained in the Bill provisions to ensure regular, timely and public reporting for accountability purposes, and further expects that there will be provision for a strong protective mandate and judicial (or at the very least quasi-judicial) powers in addition to the promotional mandate. Zimbabwe needs a Commission with both such mandates if it is to escape the vicious cycle of violence, human rights violations and impunity as we move forward to greater democratisation.

A pleasant surprise is the stated intention to consider an International Agreements Bill to “*deepen cooperation with all the members of the international community*”. The Bill “*aims to rationalize the system of ratifying, publishing and domesticating international agreements*”. This, if realized, and if applied to human rights instruments will be an enormous step forward in terms of building confidence in the human rights community locally, regionally and further afield.

ZLHR looks forward to seeing a standardized and non-complex procedure of ratification and domestication which will be applied across the board and particularly

in relation to instruments which seek to prevent the scourge of such international crimes as torture and enforced disappearances.

Similarly, the intention to present a Trafficking in Persons Bill will go a long way towards combating this increasingly prevalent and disturbing attack on vulnerable groups within our society. ZLHR calls for increased debate and consultation before such drafts are finalized.

The Attorney General's Office Bill

ZLHR notes the intention to present the long-outstanding Attorney General's Office Bill. It is disappointing to note that no attempts were made by the policy-makers to engage and consult stakeholders before this Bill was drafted, particularly those from the legal profession who understand and sympathize with the constraints and dangers faced by technocrats within this Office attempting to carry out their duties professionally.

We expect to see clear provisions in this Bill that establish an independent National Prosecuting Authority, which is separated from the political functions of the Attorney General acting as the Chief Legal Advisor to government, and which is staffed from the highest level in a manner which is not subject to political compromise.

ZLHR further expects to see provisions which clearly provide for public reporting in relation particularly to the Office's prosecutorial functions and activities to an independent body, as well as similar procedures for the discipline of errant individuals within that Office so that a clear message is sent that no person is above the law.

Economic-Related Legislation

The Legislative Agenda further indicates an intention to present for consideration the Mines and Minerals Amendment Bill and the Zimbabwe Exploration Corporation Bill.

These Bills will deal directly with issues relating to the abundant natural resources which have become so central to the economic recovery and development of our country, but also regrettably to the survival and enrichment of a small elite.

ZLHR is of the firm belief that Zimbabweans should be the primary beneficiaries of the country's resources, and that this is central to the empowerment of our people and the development of our country. However, we reject the notion that a few should benefit at the expense of the majority, as has been the case in the past.

ZLHR therefore expects that such intended legislation will comprehensively address how such resources will be explored and extracted in an environmentally sustainable manner, and how they will benefit those who reside on, and work, the land under which such riches are to be found. The legislation should put in place clear mechanisms for scrutiny of such activities whilst ensuring that fundamental rights of those who find themselves in such areas (such as housing and development) are respected.

It is hoped that the intended Environmental Management Act, which is a commendable inclusion in the Legislative Agenda, will be linked to such other Bills to ensure a sustainable future for the generations to come.

Related to such empowerment initiatives is the proposed Women's Council Bill. Whilst moves to empower the majority gender in the country must be applauded, there is need to ensure that such initiatives are not mere payment of lip-services to the needs of women in Zimbabwe. It is also disappointing to note that a Gender Commission is overlooked once again – this, after all, is the basic mechanism through which continuing violations of the economic, social, cultural, civil and political rights of women can be protected, promoted and enhanced.

ZLHR will submit its detailed analysis and submissions on these and others Bills brought before Parliament at the appropriate time; at present, the above are general comments in relation to the key intended legislative amendments.

Spotlight remains on Marange diamonds

HARARE-Rights groups have said they will continue monitoring the situation in Marange and have asked governments in the Kimberley Process Certification Scheme (KPCS), a diamond monitoring group, to hold Zimbabwe accountable to its promises to end rights abuses.

Zimbabwe agreed to end illegal mining and rights abuses by soldiers controlling the alluvial diamond rich field in a last-minute deal that allows the country to export limited stocks of Marange diamonds under KPCS supervision until early September.

Zimbabwe will only be allowed full exports if a review mission that will visit the country in August and September to assess the situation produces a non-adverse report.

The KPCS was set up 10 years ago as a joint government, civil society and industry players' body to oversee mining practices and end trade in diamonds mined in conflict situations or used to finance wars.

Global Witness, a group that campaigns against resource-linked conflicts and a KPCS member, said Zimbabwe's challenge was to convince the 75-member body to allow full exports. Zimbabwe can do this by stopping one of the bloodiest military-organised diamond mining on the continent.

"We fervently hope that the governments in the Kimberley Process will, for their part, hold Zimbabwe to its commitments in order to begin to restore the battered integrity of the scheme," said Annie Dunnebacke, the diamond campaigner for Global Witness.

According to a World Diamond Council (WDC) statement issued at the end of the Russia meeting, the deal was reached after intense and tough two-day discussions to try resolving a deadlock over the status of the controversial Marange stones. The Russia meeting followed a deadlock in Israel in June, where some KP members strongly objected to certification in light of ongoing rights abuses as highlighted by the five-week imprisonment of diamond rights activist Farai Maguwu.

Rights groups remain skeptical after the Russia deal and cite Zimbabwe's record in shredding international agreements as reason for their apprehension.

"This agreement is far from perfect, and it will take considerable efforts by all parties to the Kimberley Process, especially Zimbabwe, to make it work," said Nadim Kara of Partnership Africa Canada.

"The crisis in Zimbabwe's diamond sector should act as a wake-up call to governments and the diamond industry: this issue is too important, both to consumers and to diamond mining communities, to keep lurching from crisis to crisis. The system needs urgent and far-reaching reform at a time when consumers are demanding action on blood diamonds."

Zimbabwe eased resistance to its quest for KPCS certification when the High Court released Maguwu from remand prison on stringent bail conditions. Rights groups and key diamond

industry players, such as WDC chairman Eli Izhakoff, noted that Maguwu's release would assist the KPCS to move forward.

Rights groups said the courts should drop all charges against Maguwu, who was arrested after calling KPCS monitor Abbey Chikane's attention to ongoing military-led abuses and illicit diamond mining and trading by soldiers.

"To demonstrate its commitment to human rights respect, the government of Zimbabwe must drop all charges currently levelled against Farai Maguwu, who has been in custody on charges we believe to be nothing but persecution. It is morally wrong and outright unethical for companies to do business in the context of serious human rights abuses," said Crisis in Zimbabwe Coalition.

Maguwu, released on bail last Monday as the KPCS negotiators were about to meet on Zimbabwe, faces 20 years in jail for allegedly publishing or communicating falsehoods prejudicial to the State.

Prosecutor delays MP's diarrhoea trial

MURAMBINDA-Makoni South Member of Parliament Hon. Pishai Muchauraya will now stand trial in September for allegedly claiming that President Robert Mugabe was too old, suffering from chronic diarrhoea and nearing death.

Hon. Muchauraya's lawyer David Tandiri, who is a member of Zimbabwe Lawyers for Human Rights (ZLHR) told *The Legal Monitor* that Murambinda Magistrate Tendai Mahwe postponed the legislator's trial to 22 September, 2010 to allow the State to furnish him with

State papers. The trial had been scheduled to commence last Friday.

"It was not possible to go for trial because the State papers were not ready. The State witnesses were also not available," said Tandiri.

The State alleges that the Makoni South legislator insulted and undermined President Mugabe's authority when he told villagers at a rally on 8 October 2006 at Makoni Business Centre that: "*Robert Mugabe achembera, arikurwara nemanyoka asingaperi arikurarama achirapwa nachiremba. Joshua Nkomo, Simon Muzenda naNdabaningi Sithole vakafa vane makore (82) nokurwara kwaari kuita anogona kufa uye zvokuvadzera yokutonga hazvisi kuzoita.*"

The police deduced Hon. Muchauraya's alleged statement to mean that; "Robert Mugabe is now old and is suffering from chronic diarrhoea and is living under the constant aid of a doctor. Joshua Nkomo, Simon Muzenda and Ndabaningi Sithole died at the age of (82). Robert Mugabe is now 82 and is sick and can die because of his illness therefore it is unacceptable for him to extend his term of office."



Makoni South Member of Parliament Hon. Pishai Muchauraya

The police also allege that Hon. Muchauraya undermined President Mugabe when he uttered the words; "*KaMugabe mudenga, batanidzai naGrace Mugabe, roverai pasi.*"

In their charge sheet, police deduced this to mean; "Tiny Mugabe up. Put him together with Grace Mugabe then crush them both to the ground."

For allegedly making such statements during an address to villagers of Makoni South, the police say not only did Hon. Muchauraya make false statements but also engendered feelings of hostility towards or caused hatred, contempt or ridicule of President Mugabe.

Hon. Muchauraya becomes the fourth legislator since January to be hauled before the courts for allegedly insulting and undermining the authority of President Mugabe.

In May, the police charged Senator Morgan Komichi with undermining the authority of or insulting President Mugabe. The police alleged that Komichi, undermined and insulted President Mugabe by singing a song at a rally in Mashonaland Central province with the lyrics; "Grace's husband reminds me of my donkey which died long long back". However, Senator Komichi successfully applied for his removal from remand last month.

Epworth MP Hon. Eliah Jembere, who had at one time been dragged to court for allegedly insulting the octogenarian leader was removed from remand last month after his lawyer Jeremiah Bamu of ZLHR applied for refusal of further remand.

In January, Constitution Parliamentary Select Committee (COPAC) co-chairperson and Nyanga North MP Hon. Douglas Mwonzora was summoned to stand trial on allegations of likening President Mugabe to a "goblin" at a rally at Ruwangwe Growth Point in Nyanga North constituency on 21 March 2009.

The police alleged that Hon. Mwonzora uttered the following words: "President Robert Mugabe *chikwambo uye achamhanya. Ndaona Mugabe achigeza, tauro muchiuo, sipo muhapwa uye ndebvu hwapepe. Pamberi neMDC, pasi nechihurumende chembavha chinotsunga vanhu vasina mhosva chichitora zvinhu zvavo*". Police took this to literally mean; "President Mugabe is a goblin and will run... I saw Mugabe bathing, towel on his waist, soap under his armpits and big beard... forward with MDC down with bad government of thieves which arrest innocent people and taking away their property (sic)."



No change after all... Minister Didymus Mutasa

It takes a son to see the light...

Didymus Mutasa the Minister of State for Presidential Affairs and ZANU PF secretary for administration only got to realise how police conditions have become worse than during the Rhodesian era after his son Martin spent close to a week locked up in a Mbare police station for allegedly trying to grab a private business venture using political muscle.

Opinion: What will come out of the COPAC process?

HARARE-Patrick Chinamasa, ZANU PF's principal power sharing talks negotiator and deputy legal affairs secretary, has left no doubt about the constitution making process' fate.

At a round table debate with the fiercest critic of the Constitution Select Committee (COPAC) process Lovemore Madhuku, Chinamasa said ZANU PF would oppose any draft constitution that did not reflect his party's views. Reports by local and international rights groups on previous ZANU PF campaigns that have killed hundreds of people are instructive.

"If the outcome does not faithfully reflect what the people (read ZANU PF) have said, you can be sure that ZANU PF will say NO. If people (One asks: which people?) seek to manipulate what people (One may ask again, which people?) are saying, you can almost decide what our position would be. So it is not surprising

we may find ourselves on the same side with Madhuku but for completely different reasons," said Chinamasa, who is also the Minister of Justice and Legal Affairs as he was addressing journalists at the Harare Press Club last week.

So the constitution must reflect the wishes of ZANU PF for it to pass the referendum? There have been concerns from civil society organisations on whether the COPAC process will bring out a new constitution that reflects Zimbabwe's desires.

"We are going to the people saying: No gay rights in the (new) constitution. People understand that... We are going for a referendum. As far as we are concerned we have not made up our minds whether to campaign for a YES or NO because we do not know what the outcome will be," added Chinamasa, to the shock of the audience.

The Justice Minister confirmed that his party had been coaching people on what to tell COPAC outreach teams, something that Madhuku said provided further evidence of manipulation.

"Only four or five people speak, even if there are 400 people or more (at the COPAC outreach meetings). Their presentations are surrounded by the issue of the President," said Madhuku, whose organisation, the National Constitutional Assembly (NCA), successfully campaigned for the rejection of the 2000 draft constitution that left executive powers intact with the Presidency.

He added: "I can assure you that they (ZANU PF) will be campaigning for a YES vote only on the basis (that the President's powers are not toned down). At the end of the day we will have a constitution which is around the Kariba draft constitution.

"Our President will not accept a constitution which does reflect what he has been telling the ZANU PF Central Committee."

The constitutional lawyer said it was only President Robert Mugabe who could subject a draft constitution to a referendum.

"There will be no discussion with the Prime Minister. The President of our country-we all know him-will not send to referendum something which does not reflect the views of his party. What we will get is a constitution that will serve the interests of ZANU PF or the ruling parties," said Madhuku.

In 2000, the NCA campaigned for a NO VOTE saying the constitutional process then headed by Chief Justice Godfrey Chidyausiku was flawed and had ignored people's views. It already seems that is where Zimbabwe is slowly headed for.

GALZ pair on trial over Mugabe slur

HARARE-State prosecutor Memory Mukapa last week furnished lawyers representing two employees of the country's only gay and lesbian group, the Gays and Lesbians of Zimbabwe (GALZ) with State papers in preparation for their trial.

Employees Ellen Chademana, an administrative assistant, and Ignatius Mhambi, a consultant accountant, will stand trial on 26 July, 2010 for allegedly undermining the authority of or

insulting President Robert Mugabe by displaying a plaque of former San Francisco Mayor Willie Lewis Brown, Jr in their Milton Park office in which the African-American allegedly denounces President Mugabe's homophobia against gays and lesbians.

"The proclamation states their leader Willie L Brown Junior had condemned the homophobia of President Mugabe and the Zimbabwean government and express the support for Gays

and Lesbians of Zimbabwe whilst the President is against that. By displaying documents attacking the Office of the President of the Republic of Zimbabwe and advertising Gays and Lesbians of the two and others (sic) acted in a manner which undermine the authority of or insulting the President," reads part of the State outline.

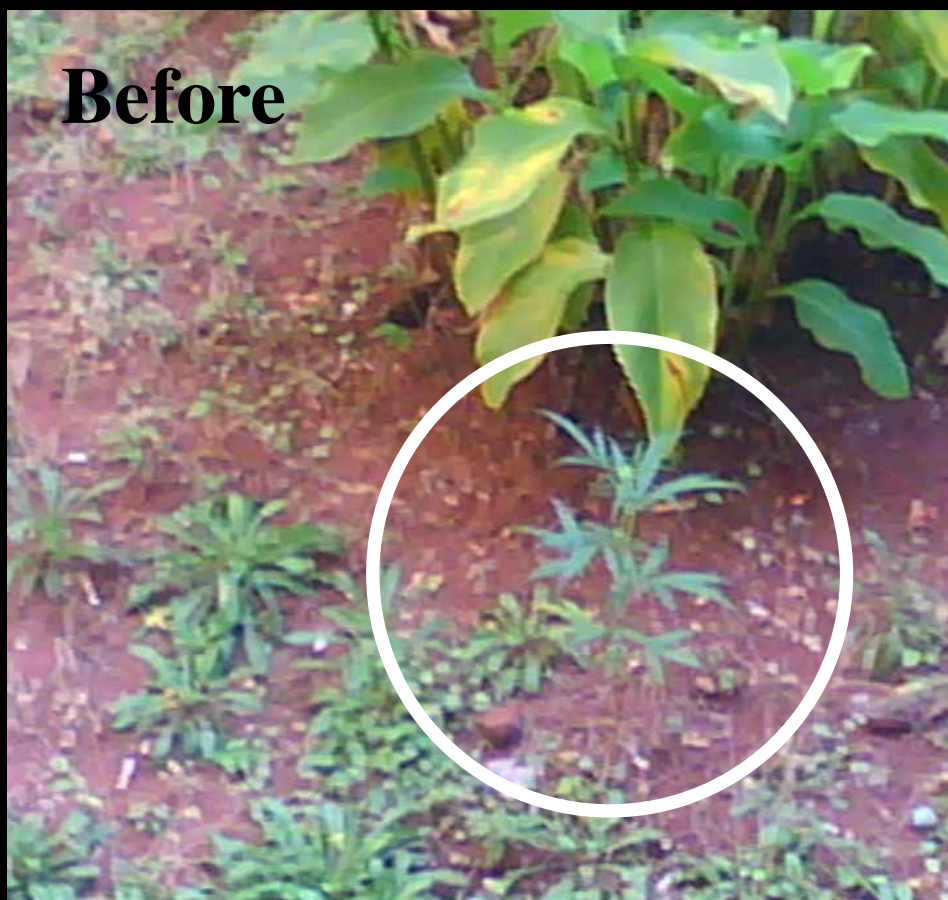
Mukapa says the State will produce Brown's proclamation, which the police seized during

their raid of the GALZ offices in May as evidence against Chademana and Mhambi.

Already, Mhambi is on trial on charges of possessing obscene, indecent or prohibited articles in breach of Section 26 (1) (b) of the Censorship and Entertainment Control Act Chapter 10:04, a charge which he denied in court.

Chademana's trial on the same charge commences tomorrow.

Court smokes out Mbanje



Impact... This marijuana plant circled growing inside Rotten Row Magistrates Court and exposed by The Legal Monitor last month has been smoked out. The picture on the right shows the freshly cleared out land where the weed was growing