

The LEGAL MONITOR

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Rule of law precarious-report

HARARE-Economic inducements and threats of physical harm being used to keep the judiciary under control, state security agents' impunity and deteriorating training standards are some of the problems affecting the rule of law in Zimbabwe, eminent international judicial bodies have noted. A report released last week by several distinguished international associations of lawyers noted that Zimbabwe's situation regarding the rule of law remained precarious since the formation of the coalition government 16 months ago.

"By far the majority of the senior judiciary remains fundamentally compromised by State patronage, grants of land and other gifts given to them by the former government. The present government has not sought to claw back such inducements from the senior judiciary nor has there been any policy initiative directed at re-establishing the integrity of the senior judiciary in the eyes of the public," read part of the executive summary to the report. The report, titled "*A place in the sun: A report on the state of the rule of law in Zimbabwe after the Global Political Agreement*," was produced following a mission that visited Zimbabwe from 24 October to 4 November 2009, the same period when Zimbabwe expelled the United Nations Special Rapporteur on Torture, Dr Manfred Nowak.

The mission, which conducted wide-ranging interviews during its visit, comprised of the Chairman of the General Council of the Bar of England and Wales, Desmond Browne QC, the President of the Commonwealth Lawyers Association, Mohamed Husain, a representative of Avocats Sans Frontières, Lara Deramaix, a representative of the Belgian and Flemish Bars and Philippe de Jaegere, the Vice-President of Avocats Sans Frontières, Netherlands.

Other team members included Hans Gaasbeek, the Chairman of the Bar Human Rights Committee, Mark Muller QC, the Project Coordinator of the Bar Human Rights Committee, Jacqueline Macalesher, and Ijeoma Omambala and Andrew Moran of the English Bar.

"The magistracy is under pressure as it has been for years and magistrates are subject to threats, intimidation, arrest and prosecution when they displease the authorities. In one case referred to in the body of this report a magistrate in eastern Zimbabwe was himself prosecuted by the authorities as a result of having granted bail to the deputy minister designate for Agriculture, Mr Roy Bennett. One interviewee described the magistracy as the unsung heroes of recent years," read the report, which also paid tribute to Zimbabwe's lawyers for braving the harsh and dangerous conditions they operated under.

Findings contained in the report mirror those of local civil society groups and other human rights defenders and show that several cases that have gone before the courts since the formation of the coalition government indicate the rule of law remains in the intensive care.

The report contained the following recommendations:

- The culture of impunity on the part of the police and State security forces should be ended forthwith.



Lawyer Mordecai Mahlangu was a victim of the police

Those suspected of having committed criminal offences should be investigated and if appropriate prosecuted regardless of their political affiliation

- The Attorney-General and his representatives should discharge their duties fairly and impartially and in the interests of justice. In particular, the practice of automatic opposition to bail so as to secure a further seven days' detention under section 121 of the



Lawyer Alec Muchadehama was arrested last year

Criminal Procedure and Evidence Act should be ended

- A Judicial Services Commission should be formed with a membership comprising, inter alia, retired Justices of the Supreme Court and senior lawyers. The Commission should be entirely independent of the executive as to both its membership and its financing. A transparent nominations process should promote judicial appointments against agreed criteria based on merit

- A Code of Conduct for Judges should be introduced providing for, inter alia, full and frank disclosure of the assets of the Judges of the High Court and the Supreme Court over a certain value (to be set in consultation with the Judicial Services Commission). Judges having received property of any nature from the Government should be required to return that property forthwith
- Responsibility for enforcing the Code of Conduct for Judges should be vested in the Judicial Services Commission which should have the power to discipline Judges including by suspension from office or dismissal in extreme cases such as serious misconduct or incapacity. The current remuneration of Judges and magistrates should be reviewed to ensure that salary and benefits are commensurate with the status and responsibility of their office
- Lawyers should be permitted to practise their profession without hindrance, harassment or intimidation
- The Government should comply with its obligations under the SADC treaty and accept the jurisdiction of the SADC Tribunal and give full faith and credit to decisions of that Tribunal. If necessary, domestic legislation should be brought forward to ensure that decisions of the SADC Tribunal are enforceable directly in Zimbabwe.

Court acquits GALZ worker

HARARE- Magistrate Sandra Mupindu has acquitted Ignatius Mhambi, an employee of the Gays and Lesbians of Zimbabwe (GALZ) who had been on trial on charges of possessing pornographic material.

Magistrate Mupindu acquitted Mhambi last Friday after his lawyers Jeremiah Bamu and David Hofisi both of Zimbabwe Lawyers for Human Rights (ZLHR) applied for discharge at the close of the State case in which two witnesses testified against the GALZ employee.

Magistrate Mupindu ruled that the State had failed to prove a *prima facie* case against Mhambi who works as a consultant accountant for the country's only gay and lesbian group.

"The court concludes that the State failed to show a *prima facie* case against the accused person," said Mupindu.

Magistrate Mupindu said the State witnesses' evidence contradicted each other as one of them gave evidence which weighed against the State case during cross examination in court.

The State, Mupindu said, failed to show that Mhambi had exclusive control or use of the office in which the police allegedly recovered the pornographic material.

The Magistrate said the State failed to prove mental or physical possession of the material. She said it was not in dispute that other people had access to the office that Mhambi was found in. So the State failed at the preliminary stage to establish a *prima facie* case against the accused.

Mhambi had been on trial since early July after the police arrested him together with Ellen Chademana, an administrative assistant at the GALZ offices in Harare for allegedly possessing pornographic material in breach of the country's censorship laws.

However, Mhambi will still stand trial today together with Chademana on charges of 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.

State worsens farm workers plight

In this issue of *The Legal Monitor* we reproduce a recent International Trade Union Confederation (ITUC) Spotlight interview with Gertrude Hambira (GH), the general secretary of the General Agricultural Plantation Workers Union of Zimbabwe (GAPWUZ).

ITUC: What does the land reform implemented in Zimbabwe since the year 2000 consist in?

GH: It could be seen as a racial issue, as white farmers are evicted from their farms to be given to blacks... but the fact is that they are given to the blacks that are part of the political elite: ministers, war veterans, ZANU-PF supporters, judges, etc. The ministers have received around five to ten farms per person. In the process, the new owners have evicted the farm workers who were supposed to work this land. They only keep five to ten workers, for example, on a farm that used to employ 200 people. Production is falling as a result, and this affects the production of the entire country. The potentially active agricultural labour force prior to the reform was around 500 000 during high season (including seasonal workers), but it has now fallen to almost 120 000. Most workers are abandoned on the farms and become internally displaced, living on the side of the road; others hang around in the villages and try to survive on piecework. Some take up illegal activities, such as gold or diamond panning, or join the informal economy, etc.

ITUC: But it is not in the new owners' interest to evict the farm workers. Why do they do this?

GH: Everyone wants land, but not everyone wants to be a farmer. Farming is a business, not a hobby; every effort has to be put into it. To produce, you have to be on the farm. Yet these new owners spend most of their time in offices from which they give orders, and there is no one on the ground to supervise the work that is supposed to be done. If you take on a farm and part with the labour force and start to underpay the workers, you are heading for failure. When this happens, you place the blame elsewhere (on the opposition, the workers, the banks that won't give you a loan), but it is you yourself who put yourself in this situation.

ITUC: Has the entrance of opposition leader Morgan Tsvangirai into the government not helped the situation?

GH: Things may have improved for the rich, but when there is a change in the structure of a system, people expect to see bread and butter on the table. This is what the ordinary person in the street would like to see the government focusing on, but within a week of the national unity government being formed, farms were being seized again, workers were being evicted and others continue to be underpaid. The human rights violations have continued and trade unionists are still being persecuted and arrested. It was under the rule of the unity government that I had to go into exile. Yet an ordinary woman like me has no intention of overthrowing the government, or reversing the land reform. All I am doing is telling the truth.

ITUC: What led you to go into exile?

GH: I was summoned to the JOC (Joint Operations Command), a high-level structure of the army, police, prison system and intelligence services.



Gertrude Hambira

On 19 February, they summoned me to the police headquarters and asked me why I had produced a documentary on the human rights violations linked to the land reform. They questioned me for about two hours. Three days later, they sent seven men to "kidnap" me, which implies being arrested and held in secret for an indefinite period. Fortunately, I wasn't at the office, and I fled the country. After my departure, my colleagues were arrested. They were not beaten but they were heavily intimidated. They were told that they would die in jail if they didn't tell them where I was.

ITUC: What form did your interrogation take?

GH: They kept asking me where the images of the documentary were filmed and what our intentions were. They told me I should be imprisoned and die because I am a dangerous person. I answered that I was only telling the truth, that I would expect them, rather, to ask me how to stop all these terrible acts of violence. Instead of that, I was confronted with an aggressive interrogation.

ITUC: Have you been arrested in the past?

GH: Yes, and I have also been beaten by the police on a number of occasions. My latest arrest was in December 2008, when we took part in a ZCTU demonstration about the lack of money in circulation. I was severely beaten by the police in the street and was then held in detention for about two hours before being released. The GAPWUZ documentary denounced the torture inflicted on black workers and white farmers. It shows, for example, the case of a worker thrown into a crowd of drunken people that treat him with appalling cruelty. Are these people paramilitaries, gangsters? They are the "Youth Militia." The government has set up a youth militia made up of young unemployed people from rural areas. They receive training and are then sent to invade farms. They start to harass the workers, forcing them to attend their meetings. If the workers refuse to obey them, they accuse them of being

members of the opposition and threaten to "discipline" them. Then they harass them, beat them up, tie them to trees to beat them, force their children to watch the torture they inflict on them.

ITUC: They are like paramilitaries employed to do the dirty work?

GH: Yes, and if we call the police for help, they simply look on without doing anything. Is the same violence against white farmers and their black workers described in your documentary still taking place now? At present, they are evicting them but not assaulting them. The Youth Militia sometimes comes to drive away the workers living on the roadside, but there are organisations that come to provide them with humanitarian assistance.

ITUC: What happens to the white farmers who are evicted?

GH: Some have gone to Australia, England, New Zealand or neighbouring countries. All they can take with them is their family. Our documentary shows the case of an evicted white farmer worrying about his daughter's schooling, but who is going to take care of the schooling of the 200 workers he used to employ?

There is nothing wrong with correcting the inequalities that existed because the good land was owned exclusively by the white minority, but why kill a worker, a farmer, in the process, why do children have to be thrown out of school? We need a genuine land reform programme that does not lead to human rights violations.

ITUC: Can the union remain active in such a context?

GH: Prior to the land reform, we had 150,000 members. This number has now fallen to around 25,000. Most of our members have been thrown off the land where they used to work. Our union is doing everything it can to remain strong; we have done nothing but rebuild it over recent years. When the farms were seized as of the year 2000, all the trade union structures

were destroyed. We started to build them up again. Then, in 2005, human rights violations were rife and trade union structures were hit once again. We had to start rebuilding them after the elections. The farm evictions that have been pursued over all these years have meant that we have constantly had to rebuild our structures. In 2008, during the most violent elections ever seen in Zimbabwe, all the union structures were affected once again. Other trade unions were hit, but the agricultural union was the worst affected. We have always, in fact, been in the process of building up the trade union within rural communities. We have been recruiting members since 1985 through education programmes, meetings, explaining the benefits of becoming a member. It took nearly 20 years to develop this union, but what we had built was demolished virtually overnight. One day we are building, they next day it is destroyed... that is the context we have had to overcome, surviving thanks to the support of foreign unions and other partners around the world.

ITUC: What services are you able to offer your 25,000 members?

GH: A trade union's work is not limited to negotiating wages. When farm workers are thrown off the land, we represent them in the courts; we establish links with organisations that can provide them with humanitarian assistance. We also organise civic education programmes, education on HIV, etc. You provide legal assistance, but it is a well-known fact that the judicial system in Zimbabwe is far from independent... Of course, but we have to do it, because one day normality will be restored and we will be able to reopen the cases and demand justice.

ITUC: Your documentary reports on the cases taken to the SADC Tribunal. What rulings did it deliver?

GH: The SADC Tribunal affirmed that the government should not seize the farms, but the latter refuses to implement these rulings and there is no one there to force it to do so. Some of the cases taken before this tribunal even involved farms that came under the SADC bilateral partnership agreement, which were not supposed to be affected by the land reform. According to this partnership, everything produced on these farms is for export to SADC countries.

ITUC: How can international labour solidarity help you?

GH: The ITUC and its members should write to the government of Zimbabwe, support the ZCTU, and join with the IUF in highlighting the plight of farm workers. And whenever possible, financial resources should be offered through the ZCTU, to help our members affected by the reform. All the workers interviewed in the documentary, whose faces were concealed, are still in hiding in Zimbabwe, they are in an extremely difficult situation.

ITUC: Knowing the problems you would face as a trade union leader, what motivated you to take on this role?

GH: I am passionate about my country and the people I represent. They were voiceless for so many years. I cannot simply sit back and watch what we have built over the years being destroyed. Someone has to speak out, and I was given the mandate to speak on behalf of Zimbabwe's workers when I was elected at a congress.



15th Ordinary Session of the African Union: Need to ensure Peace and Security during election periods within the African continent

The 15th Ordinary session of the African Union (AU) in Kampala Uganda, between the 19th to the 27th of July 2010 has adopted the theme of "Maternity, Infant and Child Health and Development in Africa". One of the main issues identified within this theme is that of maintaining Peace and Security in Africa. Zimbabwe Lawyers for Human Rights (ZLHR) takes this opportunity to express its concerns over the persistent violation of human rights and disregard for upholding and ensuring peace and security during election periods in Africa, and more specifically in Zimbabwe.

Ensuring Peace and Security during Election Periods

The 15th Ordinary Session of the AU has reemphasized its commitment –undertaken at Addis Ababa in January 2010 - to ensuring peace and security on the continent, including the resolution of ongoing conflicts and prevention of future conflict. ZLHR acknowledges that conflict in one country affects the region such that the protection and promotion of human rights can only be achieved and guaranteed through ensuring peace and security within all member states of the AU. ZLHR remains concerned by the threat to peace and security posed by conducting of elections in many African countries, including Zimbabwe. Further, ZLHR is concerned by the increasing recourse to political agreements as a resolution of election disputes – which agreements are becoming more and more common and yet they are not a reflection of the will of the people. Such political agreements clearly encourage impunity by persons or political parties which, despite having lost elections and any popular legitimacy, unleash violence as an instrument to force their way into an inclusive or coalition government and retain illegitimate political power.

It is essential that the AU, and sub-regional authorities such as SADC, take effective measures to ensure that the causes of conflict, including contested elections, are pre-empted and resolved in a manner that guarantees sustainable peace and security and upholds the freely expressed will of the people.

In Zimbabwe, elections have proved to be a source of conflict compromising the security of participants and ordinary Zimbabweans. The 2008 presidential election in Zimbabwe was a reminder of the extent to which elections can lead to politically motivated violence, internal displacement of thousands of people and ultimately to the breakdown of peace and security. While the Global Political Agreement became the last resort to securing an end to political tension and violence in Zimbabwe it was ultimately an exclusive agreement between political parties which was allowed to take precedence over the will of the people of Zimbabwe expressed in free and fair elections. Indeed there remains a risk of repetition of political violence in future elections in Zimbabwe given the failure to provide effective remedies to address the 2008 election related gross human rights violations and ensure their non-repetition. Further, the ongoing constitution making process in Zimbabwe, itself an essential pre-requisite to ensuring future free and fair elections, remains shadowed by allegations of intimidation and subverting of the expression of the will of all Zimbabweans regarding the content of a new constitution. Such allegations are a serious concern, given that a constitution established upon the will of its people is the foundation for the rule of law, peace and security in any country, including securing free and fair elections.

ZLHR calls upon the AU and sub-regional authorities, including SADC:

- To strengthen their institutions and mechanisms for responding to threats to peace and security, including taking pre-emptive measures to maintain peace and security;
- To increase its efforts to ensure that all elections across the continent are conducted in a manner which ensures transparency and legitimacy, avoiding violence and the breakdown of peace;
- To stop the practice of imposing political agreements and the formation of inclusive/coalition governments, but rather to ensure that the will of the people expressed through free and fair elections remains the basis of the formation of any government;

iv. To ensure that elections adhere to international and regional standards and good practices that safeguard and enforce the will of the people to determine the formation of a representative and accountable government;

v. To empower women to take a leading role in finding solutions to conflict, including their participation in peace agreements;

ZLHR also calls upon the Government of Zimbabwe as a member state of the AU committed to fulfilling its objectives and aspirations, to undertake the following:

- Ensure that effective measures are undertaken to fulfill the terms of its Global Political Agreement, especially those concerning the provision of remedies for past human rights violations; To undertake measures to ensure that

all future elections in Zimbabwe are conducted in a manner which safeguards and ensures the peace and security of ordinary Zimbabweans, guaranteeing a legitimate and transparent outcome which truly reflects the will of the people;

- To ensure a free and consultative constitutional making process leading to the adoption of a Constitution that serves as the foundation of the rule of law, peace and security in Zimbabwe.

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Defiant police arrest monitor ... as Matinenga demands police action

HARARE-Constitutional and Parliamentary Affairs Minister Hon. Eric Matinenga has demanded that the police should impartially investigate cases of intimidation and violence linked to the constitution-making process outreach programme.

This follows reports by several civil society groups that intimidation was affecting the outreach programme, a critical component of the constitution-making project.

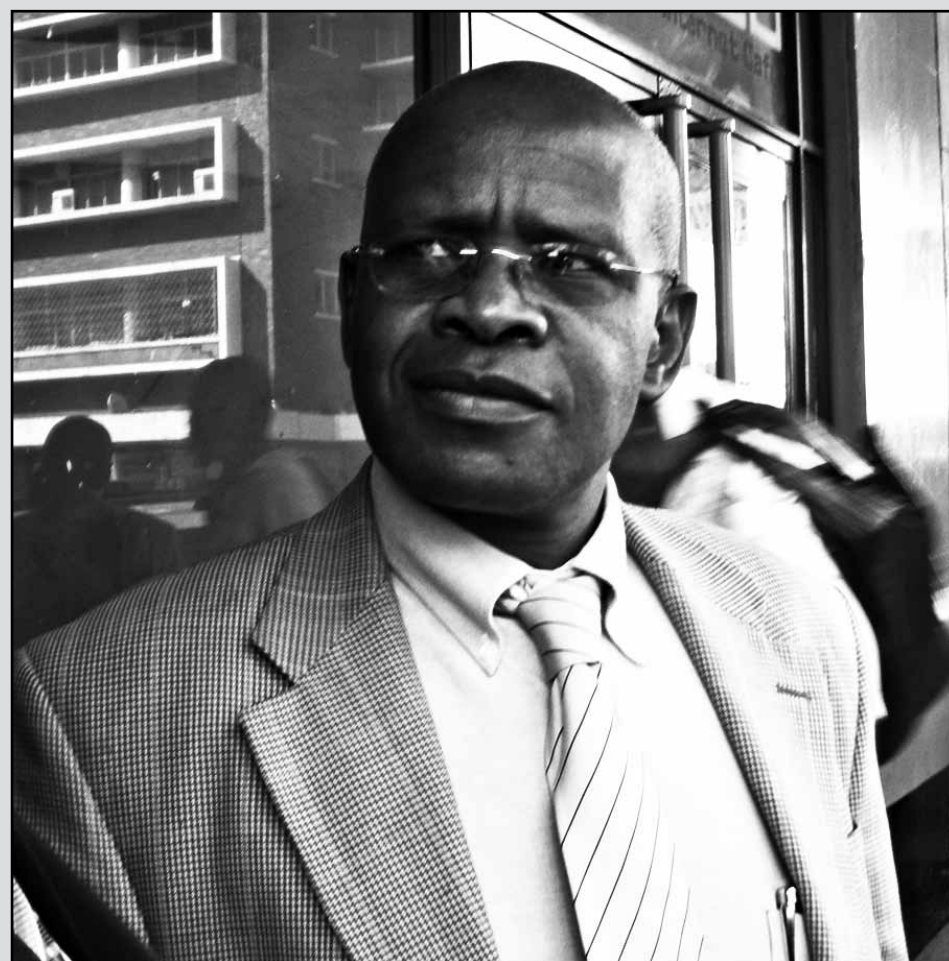
"The police must investigate and make sure that whoever is responsible for this violence must be brought to book," Matinenga said at a press conference last week.

Cases of violence and intimidation against the public and harassment of civil society monitors have marred the first weeks of the outreach process. Despite pledges to end arrests of monitors by the Constitution Select Committee (COPAC) police on Friday arrested John Ziyera, a ZZZICOMP monitor in Mutasa, Manicaland province. The outreach process is key because the core content of the proposed new governance charter will be drawn from submissions made during this programme.

Last Tuesday, Prime Minister Morgan Tsvangirai's Movement for Democratic Change party said President Robert Mugabe's supporters had on the previous day disrupted a COPAC meeting at Kaziro Business Centre in Shamva, about 100km north-east of Harare. The MDC said ZANU PF supporters assaulted its regional women assembly's chairperson Martha Muronzi causing the cancellation of the meeting.

Hon. Matinenga told journalists that COPAC was optimistic that the outreach exercise would accurately capture public views. He said COPAC had ordered outreach teams to re-visit areas where cases of violence were reported once peace was restored.

The proposed new constitution is part of reforms agreed to by President Mugabe and Prime Minister Tsvangirai under a power sharing agreement that gave birth to their 16-month-old troubled coalition government.



Hon. Eric Matinenga

a referendum, is expected to form the foundation for future free and fair elections following years of disputed polls.

Fears that the violence and intimidation characterising the outreach programme could spill over to a future election have heightened after ZANU PF said on its website last week that an election next year was inevitable. President Mugabe has previously said that elections could be held before the completion and possible adoption of a new constitution. Organisations such as the country's biggest electoral watchdog

group, the Zimbabwe Election Support Network, fear that an election held before crucial democratic reforms are concluded will only produce a disputed winner, as what happened when President Mugabe "won" a one-man presidential election run-off in June 2008 that was later rejected by African leaders. Tsvangirai, who had won first round voting in March of the same year, withdrew from the run-off citing military-led violence that he claims left over 200 of his supporters dead and thousands others displaced.

Poor rights training turn police into lawless gang-ZESN

HARARE-The country's biggest elections watchdog group has attributed police's harassment of bonafide civil society workers to lack of training in human rights and basic legal knowledge.

President Robert Mugabe and Prime Minister Morgan Tsvangirai have failed to agree on security sector reforms since forming the coalition government in February 2009.

The Zimbabwe Election Support Network (ZESN), a coalition of churches, rights groups and the student movement say this has resulted in continued human rights abuses by the police.

Several civil society activists have either been harassed or arrested by law enforcement agents during the ongoing constitution-making outreach programme to gather public views on what they want included in the proposed new governance charter.

ZESN said this trend was unacceptable, particularly in a country striving to open up democratic space after close to a decade of State domination.

The organisation said the acquittal of its staff member arrested last October on charges of holding constitution-making sensitisation workshops without police clearance vindicated civil society's position that activists are being unjustly treated by the police.

A Hwange Magistrate last week acquitted Lovemore Ndhlovu, a ZESN staff member after prosecutors failed to prove a case against him.

Ndhlovu had been on trial for contravening the Public Order and Security Act (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.



Going nowhere... Prime Minister Tsvangirai and President Mugabe are wasting Cabinet time wrangling over radio jingles ignoring more pressing issues such as security sector reforms

Bennett back in court

HARARE-Chief Justice Godfrey Chidyausiku will on Wednesday preside over an appeal filed by Attorney General Johannes Tomana challenging the acquittal of Deputy Agriculture Minister designate Roy Bennett.

Tomana made a surprise appeal after High Court Judge Chinembiri Bhunu acquitted Bennett on terror related charges in May this year for lack of evidence.

Meanwhile, the trial of former presidential election contestant Shakespeare Maya, who is accused of inciting public violence will commence this week in what critics say is a renewed crackdown against perceived political opponents.

Maya's trial will start on Tuesday at the Rotten Row Magistrates Court.

His trial follows the dismissal by Magistrate Olivia Mariga of an application filed by his lawyer Alec Muchadehama seeking his discharge on the

grounds that the State's facts did not disclose an offence.

Maya-a former leader of the National Alliance for Good Governance, who lost the 2002 violent presidential election-was initially charged with sedition but the charge was altered to inciting public violence for an offence he allegedly committed five years ago.

The State alleges that Maya, who joined Prime Minister Morgan Tsvangirai's Movement For Democratic Change (MDC) party some years ago committed the offence by inciting the party's supporters to rebel against President Robert Mugabe's previous administration at a rally he addressed in the volatile high density suburb of St Mary's in Chitungwiza in May 2005.

The State claims that Maya incited the MDC supporters to rebel against the government by informing them of the avenues available to oust President Mugabe's government from power.



Shakespeare Maya