

The LEGAL MONITOR

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COST-FREE

Magistrate Zuze humbled

MUTARE-Chipinga resident Magistrate Samuel Zuze has been left with egg on his face after a Mutare Magistrate acquitted two white commercial farmers who were accused of impairing the dignity or authority of the court.

The two Chipinga white commercial farmers Trevor Gifford, who is the immediate past president of the Commercial Farmers Union (CFU) and Dawie Joubert were arrested in January in Chipinga and charged with contravening some sections of the tyrannical Criminal Law (Codification and Reform) Act.

The State alleged that the white farmers contravened Section 182 (1) of the Criminal Law (Codification and Reform) Act Chapter 9:23 after they impaired the dignity or authority of the court by insulting Magistrate Zuze and Batsirai Kuweyi, a clerk of court at Chipinga Magistrates Court while they were performing their official duties in their respective offices.

Pertaining to the other charge the two farmers were accused of contravening Section 178 (1) of the Criminal Law (Codification and Reform) Act Chapter 9:23 in that they intentionally and physically blocked Kuweyi's way and made a lot of noise in his office.

The State also accused Gifford and Joubert of insulting Kuweyi by shouting obscenities at him.

The farmers were also accused of contravening Section 46 of the Criminal Law (Codification and Reform) Act Chapter 9:23 in that they took pictures of court officials in the court building using a Nokia mobile handset.

All these charges arose in January when Gifford and Joubert attempted to serve a High Court order suspending Magistrate Zuze's ruling ordering the eviction of four white commercial farmers from their farms.

Magistrate Zuze had earlier convicted four Chipinga farmers-namely Algernon Taffs of Chirega Farm, Z.F Joubert of Stilfontein, Mike Odendaal of Hillcrest and Mike Jahne of Silverton Farm-for refusing to vacate their properties and fined them \$800 each and gave them 24 hours' notice to vacate their homes.

However, his ruling was set aside by an order issued by High Court Judge Justice Samuel Kudya suspending Magistrate Zuze's eviction of the farmers.

But Magistrate Zuze still ordered the arrest of Gifford and Joubert in Chipinga as they attempted



Smile of a victor: Trust Maanda

to serve the Notices of Appeal as well as the High Court order suspending the eviction of the four farmers on the Clerk of Court in Chipinga.

In an attempt to convict the Chipinga farmers the State lined up five witnesses who included Kuweyi, Eugenia Urawa, a court interpreter, Shebeth Shiripinda, a clerk of court, Magistrate Zuze and Kembo Musekiwa a Superintendent in the Zimbabwe Republic Police to testify against them.

In his testimony Magistrate Zuze, who made a complaint to the police and caused the arrest of the Chipinga farmers stated that Gifford and Joubert were not supposed to have thrown court papers at him. He said the farmers' behaviour was contemptuous. He argued that he was not sitting as a court when the farmers served him with court papers but was just sitting in his chambers.

Magistrate Zuze said his court which he presides over in Chipinga has a standing rule that they don't accept any court processes at 15:45 pm.

But despite all the testimony aimed at nailing Gifford and Joubert, Magistrate Fabien Feshete acquitted the two farmers at the close of the State case after their defence team led by Trust Maanda applied for discharge following arguments that the State had not established a *prima facie* case against the farmers.

Magistrate Feshete ruled that Magistrate Zuze was served with the court papers by the Chipinga farmers in his personal capacity.

"The office of the Magistracy does not therefore come into play...Moreover Mr Zuze did not see the person who threw papers on his desk. It could be accused 1 or accused 2. The State have therefore failed to establish a *prima facie* case in this regard," read part of the ruling which was delivered recently.

The Magistrate said the State had also failed to produce a cellphone or a picture during the course of the court proceedings to sustain the charge that the farmers took pictures of the court officials.

"This is a case where an exhibit should have been produced in court. Exhibits form part of real evidence. ...The accused persons should not be put on their defence to bolster an otherwise weak State case," read the ruling.

Magistrate Zuze is no stranger to controversy. In 2009, the Attorney General (AG)'s Office strongly rebuked him after he grossly misdirected himself in a case in which he revoked a bail order granted to a farm manager whom he later imprisoned for more than two weeks.

During the same year Magistrate Zuze convicted and sentenced Hon. Mathias Mateu Mlambo and Hon Meki Makuyana, the two Movement for Democratic Change (MDC) Members of Parliament whose respective constituencies are in Chipinga.

The two have since been suspended from Parliament by Austin Zvoma, the Clerk of Parliament pending the determination of their appeals in the High Court, although the suspension has also been challenged by Zimbabwe Lawyers for Human Rights acting for the legislators.

ZLHR FACT SHEET SERIES No. 2

CONSTITUTION- MAKING AND CONSTITUTIONAL REFORM



What is Constitution-Making?

Constitution-making is the process whereby a country initiates, debates, drafts and accepts a totally new constitution. This effectively introduces a new constitutional framework and replaces an existing constitution and constitutional framework.

What is Constitutional Reform?

Constitutional reform is the process whereby an existing constitution is assessed to see whether it reflects the will and aspirations of the people, as well as accepted international and regional norms and standards. Where it does not, a process is undertaken to amend the constitution and so improve the constitutional framework of a country.

What is the Role of Ordinary People in Constitution-Making or Constitutional Reform?

The best way for a constitution to be written is through a process which is owned and driven by the people of a nation. This means that as many people as possible and all sections of society must have a chance to contribute their thoughts and wishes on how the process should be carried out, and what the constitution should contain. Even though the people choose individuals to be their representatives in government, it is not enough for these representatives to engage in constitution-making or reform without the people themselves being directly involved. Once a constitution is produced, it should be verified and accepted by the majority of people through a Referendum.

What is the Role of the Media in Constitution-Making or Constitutional Reform?

People have the right to receive and impart information about the constitution-making process, to consider diverse views and have their own views heard. Without a free media which can disseminate a wide range of information and views, a comprehensive and participatory constitution-making or reform process is impossible. State-controlled newspapers, radio and television must present diverse - rather than narrow, politicised and one-sided - views in the public interest. Private and community media should also be allowed to operate freely and disseminate information which will assist people to participate meaningfully.

What is the Role of Civil Society Organisations in Constitution-Making or Reform?

Civil society organisations play an important role in the process of constitution-making or constitutional reform as they assist the public in being fully informed and educated about the importance of a constitution, how a constitution should be produced or amended, and their role in these processes. They also capacitate and mobilise the public to scrutinise, engage, contribute and criticise the process and content from an informed perspective. Where civic and political activity is restricted, only civil society organisations and their stakeholders can agitate for a meaningful constitution-making or constitutional reform process.

Civil society organisations have fundamental principles relating to the constitution-making or reform process and must engage in activities to ensure these principles are respected. They should not stay silent when the principles of constitutionalism are not being adhered to by a government and where a government neglects the meaningful input of the people in the constitution-making process.

ZLHR FACT SHEET SERIES No. 2

WHAT ARE THE PRINCIPLES OF CONSTITUTION-MAKING AND CONSTITUTIONAL REFORM?

The basic principles on constitution-making and constitutional reform are laid out in the Zimbabwe Peoples' Charter. This states that:

"The People shall have a constitutional reform process which is characterised by:

- (a) Comprehensive consultation with the people of Zimbabwe wherein they are guaranteed freedom of expression and information, association and assembly;*
- (b) The collection of the views of the people and their compilation into a draft constitution that shall be undertaken by an All-Stakeholders' Commission composed of representatives of government, parliament, political parties, civil society, labour, business and the church with a gender and minority balance;*
- (c) A transparent process of the appointment of the All-Commission members as well as their terms of reference; and*
- (d) The holding of a national referendum on any draft constitution."*

In addition, for the process of constitution-making or reform to be effective, accepted and owned by the people, the following principles must be taken into account:

I. Inclusivity:

All citizens must be afforded an opportunity to actively and directly participate in the constitution-making or constitutional reform process. Both processes should be open and should not only be restricted to the elite people in society, nor only to representative actors.

II. Openness and Transparency:

There should be an extensive consultation process during any constitutional process and such consultation should be open, transparent and meaningful. Members of the public should have free access to the management of constitutional bodies and should be able engage them on various issues relating to the process.

III. Legitimacy:

Government and relevant stakeholders must jointly decide on a credible team of people with integrity who are representative of the various stakeholders to lead the process of mobilising participation of citizens, gathering views, drafting a new constitutional text, and presenting a credible final document to the people for approval.

IV. Accessibility:

Members of the public should be able to easily access the individuals or institutions involved in the constitution-making or reform process. They should also be able to understand the process and participate in it, which requires various programmes to educate and inform them.

V. Continuous publicity and review:

The process should be regularly publicised and reviewed to ensure that the guidelines and minimum standards are being adhered to. This will assist in identifying and correcting any challenges and shortcomings in the process.

VI. Blanket receptiveness and openness to views:

There should be willingness to accept diverse views on the process. Unfavourable views should receive equal attention.



Zimbabwe Lawyers for Human Rights
6th Floor, Bevan Court
500 Nelson Mandela Ave., Harare.
Tel.: (253-4) 251468/705370/708118
www.zlhr.org.zw



ZESN/ZPP/ZLHR Independent Constitution Monitoring Project (ZZZICOMP) Alert 6

Villagers ejected from meeting as people vote for the constitution

Harare, 12 August 2010-Eight villagers were on Thursday 12 August, 2010 ejected from a Constitution Select Committee (COPAC) outreach meeting held in Hurungwe, Mashonaland West Province.

The eight villagers were ejected from a meeting held at Corner Store Shopping Centre in Hurungwe after they were barred from making any contributions during the meeting and accused of not residing in the ward.

The ejection of the eight villagers came after some of them made contributions that were considered to be against what other villagers had been advised to articulate at the meetings.

Although the eight villagers insisted that they reside in the area they were chucked out of the meeting and eventually left the meeting place as the situation got out of hand after some commotion.

The meeting at Corner Store Shopping Centre, which was attended by more than 200 people continued after the departure of the eight villagers.

The issue of villagers not residing in a certain ward was only raised when the "strange" villagers had said something that didn't go down well with the majority of villagers at the meeting.

Incidents of villagers having been chased away from COPAC outreach meetings because they are regarded as "strangers" have been recorded at most

meetings held in Mashonaland West, according to ZZZICOMP monitors.

Participants at some meetings are reportedly being asked to vote for a particular point against the normal procedures where participants just make their contributions which will be captured by the rapporteurs.

ZZZICOMP monitors say the move is being propagated by some ZANU PF members who felt that their party's views were being diluted by some counter contributions from some members of the Movement for Democratic Change (MDC).

At Bakwa Primary School in Hurungwe there was a heated debate between COPAC members after the meeting as some members felt that the voting

process was designed to silence some people from participating.

The issue of voting for the constitution was discussed at a meeting held at Twin Rivers Hotel in Karoi on Thursday 12 August, 2010 between COPAC members and the two COPAC co-chairpersons Douglas Mwonzora and Paul Mangwana. Mwonzora and Mangwana also indicated that daily allowances for legislators and other COPAC members could soon be hiked to \$50 per day from the current \$25.

For further information and comments please contact ZZZICOMP on:
Email: zzzicomp@gmail.com
Hotlines: 0916 404 256-9/ 0916 404 292

Outrage over violence perpetrators amnesty

CHIWESHE-As President Robert Mugabe was last week ruling out prosecution of those who were responsible for the 2008 violence and killings that engulfed the country some people were left baffled to comprehend the motive behind the setting up of the National Reconciliation and Integration Organ.

“We have embarked in earnest on the process on a national healing and integration, for the sake of our children and prosperity. I want to urge all of you to note that the process of reconciliation is national. It does not seek to ferret out supposed criminals for punishment but calls all of us to avoid deadly snare of political conflict,” said President Mugabe as he was addressing the nation during celebrations to mark the National Heroes Day in Harare last Monday.

The day before President Mugabe’s speech, some people who lost their relatives to the 2008 violence said they were still finding it difficult to live next to the perpetrators of the savagery.

“I lost my husband who succumbed to poison he was given by George Murara*,” said Spiwe Nango*, a 43-year-old widow at Nyachuru



Prime Minister Morgan Tsvangirai

village in Chiweshe village. “I see George clad in his party regalia so often and it reminds me how he was dressed when he came to take my husband on 9 June 2008. The previous day they had taken nine pigs from our sty. I hope the coalition government will ensure that he goes to jail.”

Murara stays about 300 metres from where Nango’s family is living without a breadwinner. Ms Nango was left with four children: a six-year-old, a 10-year-old, a 13-year-old and a 17-year-old, who is writing his Ordinary Level examinations this year.

“At times I cry why they did not just kill all of us. I find it very difficult to look after my kids. The government does not even know that I lost my husband who used to assist me look after our kids,” said Ms Nango as she tried to hold her tears back. But she could not. One of her children showed *The Legal Monitor* where their grandparents stay about half a kilometre from their homestead.

Coalition govt setting stage for violence-report

HARARE-Zimbabwe’s coalition government is setting the stage for severe violence by failing to restore the rule of law and reform the security sector, which for decades has been used to coerce people to vote in a particular pattern, according to a warning contained in a report released this month.

People in farming and rural areas whose communities have been left vulnerable by farm invasions and continued intimidation are likely to be the worst affected victims of any future instability, the report by the Zimbabwe Human Rights NGO Forum noted.

The Zimbabwe Human Rights NGO Forum, is a coalition of 19 local organisations and has been involved in human rights work since the January 1998 food riots.

Its 20-page report entitled *Land Reform and Property Rights in Zimbabwe* warn that rural people and farm workers have always provided easy targets for political parties which use violence as a core election campaign tool. The Zimbabwe Human Rights NGO Forum report names President Robert Mugabe’s ZANU PF as one such party.

“The breakdown of the rule of law in rural Zimbabwe seems to be something that nobody in power is prepared to grapple with or even admit, let alone try to restore. The stage is being set for much more severe violence in the future,” reads part of the report. The prospect of a possible general election next year, as hinted by both President Mugabe and Prime Minister Morgan Tsvangirai, have heightened fears that political violence, which the MDC says left over 200 dead during the 2008 elections, could resurge.

“The trend in Zimbabwe has been that land invasions are more pronounced during election periods. For example, after the March 2008 harmonised elections in which ZANU-PF lost control of Parliament for the first time in its 28 years of rule, there was an escalation of violent land invasions by war veterans and the youth militia,” reads the report. “Farm workers have continued to be the victims of violence during farm occupations.”

The report notes that farm workers constitute the group worst-hit by the land reform programme, which has been characterised by violence and human and property rights violations. Most farm workers have lost not only jobs, but whole livelihoods, according to the report. The report quotes the Geneva based Internal Displacement Monitoring Centre as pointing out that about 1 million farm workers and over 3 000 white commercial farmers have been evicted since 2000.

“A number of pieces of legislation continued to be enacted. The Citizenship Amendment Act Number 12 of 2001 introduced a prohibition on dual citizenship so that people with dual citizenship would automatically lose their Zimbabwean citizenship unless they renounced their foreign citizenship. This affected 30 percent of farm workers who originated mainly from Malawi and Mozambique and disenfranchised most white Zimbabweans, the majority of whom held foreign passports.”

The report recommended that:

- Restoration of the rule of law. The restoration of the rule of law will enable the government to come up with a credible land reform programme that will address the historical imbalances and the injustices of the 2000 fast track land reform process. Constitution making process. Article 6 of the GPA gives a clear timeline on the constitution making process. The new constitution

should provide for a justiciable and non-discriminatory Bill of Rights.

- Institutional reforms to protect private property. The security forces have been used as instruments of violating instead of protecting human rights. The government should demilitarize state institutions so as to enhance professionalism in their operations. In Article XIII of the GPA, the parties agreed that the curriculum for the uniformed forces should include the subject of human rights so that they gain greater understanding of their roles and duties.
- Land audit should be done urgently. Article 5.9 of the GPA on the Land Question states that, “The Parties hereby agree to conduct a comprehensive, transparent and non-partisan land audit, during the tenure of the Seventh Parliament of Zimbabwe, for the purpose of establishing accountability and eliminating multiple farm ownerships and to work together for the restoration of full productivity on all agricultural farms.” A year after the consummation of the inclusive government, the land audit is still pending while fresh farm invasions persist.
- Stop the continuing land invasions. All parties to the GPA should publicly denounce the continued land invasions as this undermines the determination shown by the parties to reform the human rights culture. The continued violation of property rights has negative impact on economic recovery. The government should recognize that agriculture plays an important role in the country’s economy.

“I do not want to hear anything about this government,” said Hondo Nango*. “How can it let these murderers live among us. Even Smith (the late Rhodesian Prime Minister) would not have allowed them to be free. They are supposed to have gone to jail. My son (Matthew Nango*) died as punishment for supporting the MDC but after the party joined the government it has been quiet. I am sure my son is turning in his grave.”

Matthew must be turning even more after President Mugabe’s utterances on Monday. Matthew is among those who succumbed to the violence which engulfed the country in 2008. This was after the first round of elections in which President Mugabe lost to now Prime Minister Morgan Tsvangirai who heads the MDC party, where supporters of ZANU PF mainly targeted the former labour leader’s supporters. That resulted in Tsvangirai pulling out of the race. President Mugabe eventually won the second round but his “victory” was roundly condemned locally, regionally and internationally forcing SADC to call for the formation of a coalition government.

Article VII 7.1 (c) of the Global Political Agreement (GPA) which formed the basis of the transitional coalition government stipulates that Harare “shall give consideration to the setting up of a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of victims of pre and post independence political conflicts.”

As a result the transitional government set up the National Reconciliation and Integration Organ led by Sekai Holland, Gibson Sibanda and Vice President John Nkomo.

“That institute is rendered useless if it has been ordered to let free the people who killed my brother,” said Nhamo Nango on Thursday last week in Harare. “I could not believe it when I heard the President speak at the Heroes Acre.”

* Not their real names.

COPAC problems continue

HARARE-The country's troubled constitutional reforms are now likely to end early next year if there are no more plethora of problems, a senior Constitution Select Committee (COPAC) official has said.

The constitution reform exercise has been dogged by a plethora of problems ranging from political violence, intimidation to administrative challenges resulting in the exercise running behind by almost 12 months now.

"We are now targeting March next year for the national referendum because of the delays we have encountered along the way," Douglas Mwonzo, one of the joint chairpersons and an appointee of Prime Minister Morgan Tsvangirai told *The Legal Monitor* last week.

Mwonzo co-chairs COPAC with Munyaradzi-Paul Mangwana from President Robert Mugabe's ZANU PF party and Edward Mkhosi, an appointee of Deputy Prime Minister Arthur Mutambara.

"We had targeted September initially for the referendum but the outreach programme took time to take off and it had its own problems. The outreach might now end mid to end

of September in most provinces," added Mwonzo. "We have just gotten on top of violence after we asked ZANU PF to put a leash on Jabulani Sibanda. We know some elements are pathologically lawless."

Sibanda is a ZANU PF supporter and a senior war veteran, though his war credentials have been questioned on several occasions.

Last week the outreach programme-an exercise to gather citizens' views on the new governance charter-came to a halt in Manicaland, Masvingo, Mashonaland East and Midlands provinces after the government-owned Central Mechanical and Equipment Department (CMED) stopped supplying fuel to COPAC demanding payment first. The situation has since been rectified, said Mwonzo.

Zimbabweans' contributions are supposed to form the basis of the proposed new constitution according to a political agreement signed by President Mugabe and Prime Minister Tsvangirai in 2008 that gave birth to their transitional government last year in February. This is part of their wishes to pave the way for governance reforms.



Douglas Mwonzo



Munyaradzi-Paul Mangwana

Bindura farmer reclaims his land

HARARE-High Court Judge Justice Ben Hlatshwayo has ordered three Bindura farmers to allow another farmer access to his plot which they had taken control of.

The three Bindura farmers Dzingai Zerere, Talent Hofisi and Philip Kadoma evicted Dumisani Sibanda from his Guitingwood Farm located in Bindura last month after accusing him of supporting the Movement for Democratic Change (MDC) and of depleting the farm's resources.

Initially Sibanda, who was a human resources manager for the previous unidentified white commercial farmer was allocated four hectares of land at the farm together with other farmers after Guitingwood Farm was seized for redistribution by President Robert Mugabe's previous government under its land grab exercise.

Sibanda's eviction was notwithstanding the fact that he was lawfully allocated the trading site at Guitingwood Farm by the Ministry of Lands, Land Reform and Resettlement which allocation gave him the right to occupy the land and conduct farming activities. His farming activities include running a chicken breeding project and a piggery as well as mushroom production.

Last month Zerere, Hofisi and Kadoma blocked builders who had been contracted

by Sibanda from moulding bricks and building additional chicken runs in order to cater for the expansion of the poultry project accusing him of "depleting their resources."

The three farmers evicted him from the farm and informed him that Alice Kachipande, Sibanda's estranged wife was now entitled to continue staying in the house that he had lived with her as husband and wife while they would apportion the rest of his property among themselves.

The farmers only gave Sibanda a few blankets and cups before ordering him off the farm.

But Justice Hlatshwayo recently ordered Zerere, Hofisi, Kadoma and Kachipande to restore possession of the land allocated to Sibanda after the intervention of Zimbabwe Lawyers for Human Rights (ZLHR), whose lawyer Belinda Chinowawa filed an urgent chamber application seeking a provisional order allowing the former human resources manager to resume operations at his farm.

The Judge ordered that in the event of non-compliance the Officer in Charge of Bindura Rural Police Station, his deputies or any other members of the Zimbabwe Republic Police should arrest the three farmers and Kachipande for breaching his order which enforces the restoration of Sibanda's right to continue farming on his allocated piece of land.



Belinda Chinowawa