

The LEGAL MONITOR

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Murambatsvina haunts elderly victim

HARARE-In 2005, a man-made Tsunami deprived Mbuya Felistas Chinyuku of a roof over her head. Mbuya Chinyuku was one of the people swept away by the suddenness and scale of a government-backed programme of mass forced evictions.

Colloquially known more evocatively as “the Tsunami”, Operation Murambatsvina (Clean-Up), which was embarked upon by the government on 18 May 2005, affected more than 700 000 people according to the United Nations-leaving them without a home or livelihood or both.

Most people were driven deeper into poverty by the forced evictions, a situation which has been further compounded by the country’s economic crisis.

And six years on Mbuya Chinyuku remains the face of the cruel demolition exercise as the coalition government of President Robert Mugabe and Prime Minister Morgan Tsvangirai continue to deny her of a suitable shelter.

The right to housing is the economic, social and cultural right to adequate housing and shelter. It is recognised in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples’ Rights, to which Zimbabwe is a voluntary State Party.

According to lawyers representing the housing rights campaigner and former resident of Porta Farm, authorities at the Ministry of Local Government, Rural and Urban Development have attempted to deprive Mbuya Chinyuku of her allocated stand at Hopley Farm, some few kilometers outside Harare where she settled after Operation Murambatsvina.

Mbuya Chinyuku was barred from paying her annual lease fees at Makombe building in Harare. Lawyers say an official at the Ministry of Local Government, Rural and Urban Development offices only identified as Chikwature advised her that they would not accept her payment as she was suspected of inciting other people at Hopley Farm not to pay any money to the government for their stands.

“Mr Chikwature then advised our client that she (Mbuya Chinyuku) and her family would be dispossessed of their stands as it was a ministerial directive that she and her family should not get

any stands as they are trouble makers,” reads part of a letter written by Mbuya Chinyuku’s lawyer Belinda Chinowawa of Zimbabwe Lawyers for Human Rights (ZLHR).

Mbuya Chinyuku’s tragedy did not end there as her daughter, Patience Gondo, a mother of three children was dispossessed of the stand originally allocated to her forcing her to move onto her mothers’ stand.

Chinowawa accused the Ignatius Chombo led ministry of flagrant discrimination as her clients are legitimate beneficiaries of the resettlement programme at Hopley Farm.

“We remind you that discrimination is outlawed by the Constitution of Zimbabwe and as a public office you are bound by the provisions of the Constitution,” wrote Chinowawa.

Chinowawa demanded that Mbuya Chinyuku should be allowed to pay lease fees for her stand while the Ministry of Local Government, Rural and Urban Development

should restore possession and occupation of one of the housing stands to Gondo.

The human rights lawyer said failure to comply with her demand would invite litigation from the influential human rights organisation.

Amnesty International Zimbabwe executive director, Cousin Zilala, also weighed in defence of Mbuya Chinyuku



Mbuya Chinyuku

testifying that Mbuya Chinyuku had “suffered many cases of victimisation and harassment.”

In response to ZLHR’s letter, one Chimoga from Chombo’s ministry referred enquiries to the Ministry of National Housing and Social Amenities which she claimed to be “responsible for all the affairs at Hopley Farm”.

Hopley Farm is one of a number of

settlements set up under Operation Garikai or Restore Order by President Mugabe’s previous government to resettle hundreds of people left without a roof over their heads after Operation Murambatsvina.

But only a small number of displaced people were resettled while the majority of people were forced into overcrowded existing housing stock while others were forcibly relocated to rural areas.

The forced evictions drove people not only from their homes, but also from their market stalls, depriving informal traders of their means of livelihood.

Since its creation in February 2009, the coalition government has done nothing to improve the plight of survivors of the forced evictions and their children who have been born in informal settlements.

Women have been especially affected since they form the majority of informal market traders and in many cases are the primary providers, not only for their own children but also for other children orphaned by the AIDS pandemic.

When informal traders attempt to resuscitate their trade and earn a living they are persistently obstructed by the authorities.



In this file picture, Prime Minister Morgan Tsvangirai receives the petition from Mbuya Chinyuku of Hopley Farm and Petros Chatiza of Hatcliffe Extension, who are victims of Operation Murambatsvina



ZIMBABWE ELECTION SUPPORT NETWORK

Summary Review of Zimbabwe's Electoral Amendment Bill, 2011

The Parliament of Zimbabwe is attempting to make changes to the Electoral Act (Chapter 2:13). The Electoral Amendment Bill, 2011, currently before Parliament, seeks to make several changes to the existing law with a view to promoting free and fair elections. This document by ZESN seeks to explain the changes that have been proposed and make recommendations on how to improve the legal framework for elections in Zimbabwe.

The following highlights the key changes that have been proposed and how they can be improved.

Voter Registration and the Voters' Roll

The Zimbabwe Electoral Commission must make available to the public searchable printed and electronic voters rolls. There is an option to create a completely new voters roll. For proof of identity and residence, the Commission has flexibility to require any acceptable means. Unlike other countries in the region such as Mozambique, the law does not mandate the Commission to register voters based abroad (Diaspora). A matter of concern is that responsibility for the voters roll continues to be shared between the Commission and the Registrar General's Office, which dilutes accountability. The Commission should be given sole and exclusive responsibility for registration of voters and the maintenance of the voters roll.

Polling Station-Based Voters' Roll

There is provision for the introduction of polling-station-based voters' rolls so that voters can only vote in the polling station at which they are registered. This system will prevent double-voting and 'bussing in' of voters from other constituencies. However, it may also expose voters to pre-election displacement and post-election retribution since it will be easier to identify voting patterns in small localized communities.

Removal of Deceased or Absent Voters

Relatives of deceased or absent voters will be able to cause the removals of their names from the voters roll. It is recommended that incentives be put in place – such as assisted burials used in a similar campaign in Mozambique where voters have informed electoral authorities of the death of their relatives. Also, there could be synchronization with other offices such as the Births and Deaths Registration Office so that whenever a person dies, information is sent through to the Commission so that the name of the deceased is deleted from the roll.

Declaration of Presidential Results

The results of the Presidential elections must be announced forthwith and not more than five (5) days after the last polling date. Where a vote recount is demanded, it must be done within the same five (5) days. The periods run concurrently, which might cause problems, therefore, it is recommended that the vote recount period be calculated from the day on which the Commission starts the recount. Currently, the Bill states that the vote recount results can be announced within five (5) days after the "completion" of the vote recount, a position that cannot be justified for any reason. It is recommended that the five day period be replaced by a requirement to announce the recount result forthwith or otherwise within 24 hours.

Setting Election Dates

The Bill retains the old position where the President has the power to set election dates. However, as the person occupying Presidential Office is also often a contestant in an election, it would be preferable if the setting of election dates were the responsibility of the Commission, guided by the Constitution. The Constitution would specify the intervals for

all elections, giving a period within which the election must be set by the Commission, e.g. that the Presidential Election must be held in the first two weeks of March after every 5 years since the last Presidential election.

Presidential Run-Off Election

Where there is a tie in the run-off election, the Bill requires that the election of the President be decided by an electoral college of MPs in Parliament. It is recommended that this requirement be changed so that the power be retained in the hands of the voters rather than Parliament. So if there is a tie, a new election must be held until a clear winner is found. If the present system of the electoral college is retained, there must at least be a requirement that MPs be sworn-in within a specific period after their election and that this will not be dependent on the holding of the Presidential run-off election.

Accreditation of Observers

The Commission will, through the Observers Accreditation Committee (OAC) have responsibility for accrediting election observers. The problem, however, is that the OAC is dominated by political appointees which could compromise its independence. There is also no expeditious mechanism for appeals should the OAC recommend refusal of accreditation to specific observers. First, the political appointees to the OAC must be limited or otherwise diluted by greater presence of Commission members or appointees. Second, would-be observers who have been refused accreditation must be given full reasons for refusal and must be allowed to make representations to the Commission as to why the OAC's recommendations should be disregarded.

Political Violence and Intimidation

The Bill sets out special mechanisms for preventing or handling cases of political violence and intimidation. However, there is need to guard against selective application of the law and to ensure that cases are dealt with on the basis of urgency so that the public can observe the operation of the law in real terms. It should also be recognized that intimidation can be psychological and through public statements that are designed to influence the outcome of elections. There must be specific prohibitions of public statements by senior state officials who are not contesting elections where such statements are made with the intention to or reckless as to whether they would influence the outcome of an election.

Dispute Resolution

The Electoral Court is given wider jurisdiction to deal with election-related matters. However, it is likely as in previous cases that judges will be transferred from the High Court. It is recommended that the judges be drawn from the pool of retired judges who have less workload so that they can deal exclusively with matters pertaining to the court. There must also be a requirement that matters before the electoral court be dealt with on the basis of urgency to expedite the outcome of dispute resolution. Similarly, this provision of

urgency in electoral matters must extend to appeals from the Electoral Court to the Supreme Court. The same rule must apply to constitutional challenges relating to elections that may be brought before the Supreme Court. This is because in the past petitions or appeals have taken inordinate amounts of time.

Illiterate or Handicapped Voters

The Bill upholds the choice of voters to select persons who may assist them to vote, which is a departure from the previous position where the police had powers to provide such assistance. Although it is a welcome change, there remains the risk that "assistants" may impose themselves on illiterate and handicapped voters. Consideration should be given to permitting illiterate voters to vote using the thumb as they can easily identify the

party of candidate of their choice by pictures of candidates or party symbols. Also, the use of Braille technology should be explored to enable visually-handicapped voters to vote without assistance or interference.

Police Officers Role

will be specifically prohibited from interfering with the electoral process at polling stations. They are not allowed to enter polling stations unless they are called upon to do so by the elections officer and they have to submit to his or her command. To be effective however,

there must be specific and severe sanctions for breaching these prohibitions. Police must also be specifically prohibited from making public statements or any conduct that may influence the outcome of any election.

Postal Voting

This is currently restricted to persons who are out of the country on government business. This is too restrictive as it excludes those who may be outside the country on commercial or any other business. It should be more open so that the facility is available to persons who can show legitimate proof that they cannot otherwise be available on polling days. The sick, elderly and immobile who cannot travel to polling stations should also be able to use postal voting in-country. It is important however to use tamper-proof technology to prevent the risk of manipulation.

Special Voting

There is provision for special voting by members of the security forces, election officers and observers who will be involved in the election process. It is recommended that along with postal voting, this be extended to the elderly, the sick or otherwise immobile so that they are able to exercise their right to vote before the busy polling dates.

Media Coverage

There is a requirement for fair media coverage across all political parties and candidates by the public broadcaster and other media. Nevertheless, it should be made clear what constitutes fair coverage so that coverage that is overly negative, unduly critical or otherwise biased should not be regarded as fair coverage. Also, there must be clear and specific sanctions against media companies for breaching these rules. This could include

suspension of broadcasting licenses for specified periods. These powers must be exercised by the Commission.

Disclosure of Ballot Paper Information

Whilst the provision requiring disclosure of information regarding ballot papers – where printed, number printed and distributed, etc - is an important step, it must state clearly when and where the disclosures will be made. Presently it simply requires that disclosures be made 'without delay' and make no reference to the location. There must be clear guidance in the law on the timing and location of the disclosures. It is recommended that a specific time-period be stated, for example, that the disclosures should be made not more than fourteen (14) days before the election and also that the location of the disclosures must be specified as the constituency, provincial election centres or the National Command centre.

Posting Returns on Election Centres

Whilst there are provisions requiring the polling returns be given to parties and candidates and also that they be posted outside the election centres, they appear scattered and there is need for one consolidated provision which deals with this important aspect of transparency.

Pre-Emption of Results

The Bill prohibits the pre-emption of results so that only the Commission can make the announcement. It must be clear that the Commission Chairperson or other delegated person has the powers to make the announcement and the best solution against any possible pre-emption of results is to ensure the announcement of the results promptly and without delays that might give rise to speculation.

Voter Education

The Commission will be the 'gate keeper' and monitor in respect of persons who wish to provide voter education to voters. It will also have control over the receipt of foreign funding to persons wishing to provide voter education. However it is necessary to clarify the nature and extent of its powers in respect of whether it can refuse such funding and whether it has the discretion to distribute whatever funding it receives for voter education even where it has been applied for by organization.

Commission Independence

The Bill retains provisions of the Zimbabwe Electoral Commission Act on the Commission's powers and governance arrangements. As the independence of the Commission is a critical factor in ensuring the realisation of free and fair elections, provision must be made so that it draws its financial resources from the Consolidated Revenue Fund and that it must be in control of its own budget. The Commission must also report to Parliament and not to government ministers. In terms of status, as the ultimate referee in national elections, it is important to recognise that the Commission occupies similar roles to key arms of the state such as the judiciary. Its independence and impartiality are therefore matters of utmost importance. It is necessary also to prevent any potential conflict between the Chairperson of the Commission and the Chief Elections Officer who performs the executive functions on behalf of the Commission. The law must set the powers of the Commission and allow any delegations to other persons without necessarily specifying specific powers to any other officer or person.

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MP appeals against conviction

CHIREDDI-Lawyers have appealed against the conviction of Chiredzi Central Member of Parliament Hon. Moses Mare for allegedly assaulting a juvenile who had sung a praise song for President Robert Mugabe.

Magistrate Thomas Mandityira on Friday 19 August found Hon. Moses Mare guilty of assault as defined in section 89 (1) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23. Magistrate Mandityira sentenced Hon. Mare to a fine of \$20 or 10 days imprisonment.

In their notice of appeal, Hon. Mare's lawyers argue that Magistrate Mandityira erred in convicting the legislator on such trivial charges.

"The trial court erred in finding that the defence witnesses were not credible and were lying in court," the lawyers stated in the notice of appeal.

"The trial court erred in finding that the State witnesses were credible and consistent in their evidence despite inconsistencies in their evidence.

"The court erred in finding the State had proved its case beyond a reasonable doubt when in fact the State had not discharged that onus," the lawyers further argued.

Blessing Nyamaropa (pictured right) of Zimbabwe Lawyers for Human Rights is leading Hon. Mare's defence.

Hon. Mare was arrested in January last year for allegedly committing the offence.

Prosecutors claimed that Hon. Mare was so incensed by a teenager who joined in the singing of a Mugabe praise hymn "Nyatsoteerera unzw kupenga kutonga" at a funeral that he hit the juvenile on the neck using open hands in January last year.

The MDC MP has denied the charge all along.

Hon. Mare's case is not isolated. Mugabe's praise songs, repeatedly played on radio and television, have landed several residents in trouble over the past year.

Three Chiweshe villagers, Tinashe Chinyemba, Luckson Khumalo and Tafadzwa Chironga recently appeared in Bindura Magistrates' Court for allegedly distorting one of the pro-Mugabe songs by inserting Prime Minister Morgan Tsvangirai's name into its lyrics.

The villagers are being charged under Section 41 of the Criminal Law (Codification and Reform) Act Chapter 9:23 for conduct likely to provoke the breach of peace.

Another three residents from Penhalonga in Manicaland province, Patrick Chikoti, Faith Mudiwa and Phillip Dowera were in February charged under the same law for allegedly singing a modified version of Mbare Chimurenga Choir's Nyatsoteerera song at a funeral.

The residents were accused of having sung: "Nyatsoteerera unzw kupenga muhofisi mune mboko nyatsoteerera unzw kupenga" and 'Ngatishandei nesimba takabatana tibvise kamudhara aka muoffice mupinde president wenyika Morgan Tsvangirai (Listen carefully to the madman and idiot in the office. Let's work hard to remove this old man from office



Witness in no show up for Komichi's trial

HWANGE-One of the State witnesses in the trial of Senator Morgan Komichi for allegedly communicating falsehoods failed to turn up in court here forcing the postponement of the matter to next month.

Senator Komichi's trial was scheduled to continue on 15 August at Hwange Magistrates Court after being deferred last month.

The trial was first postponed last month after one witness only turned up to testify against the Movement for Democratic Change (MDC) deputy national chairperson.

Magistrate Ndlovu was once again forced to reschedule the trial to 26 September after the outstanding witness failed to show up in court for the second time.

The no show prompted Komichi's lawyer, Nosimilo Chanayiwa of Zimbabwe Lawyers for Human Rights (ZLHR), to file an application requesting for an order to proceed by way of summons and for the State to call the non-constituency Senator to court when they have put their house in order.

However, Magistrate Ndlovu ruled that the State should be given a chance to find its witness. If the witness doesn't appear in court on 26 September the matter will proceed by way of summons, the Magistrate said.

State prosecutor only identified as Khumalo alleged that Senator Komichi communicated falsehoods when he addressed and told supporters at an MDC rally in Lupane, Matabeleland North province in February last year that the provincial police, led by Officer Commanding Matabeleland North Senior Assistant Commissioner Edmore Veterai, were unwilling to release three party vehicles that were impounded by the police.

Khumalo claims that Senator Komichi made reference to the impounding of the vehicles at a rally held at Negasha stadium



Senator Komichi

in Lupane early last year where he allegedly said Veterai had confiscated the vehicles to further the interests of ZANU PF. Lupane police impounded Prime Minister Morgan Tsvangirai's campaign vehicle and two others belonging to the party's

Matabeleland North province and the youth assembly during the run-up to the disputed June 2008 presidential election runoff. The vehicles are decomposing at a police station in Lupane.

SADC firm on Zim

LUANDA-The recently ended Southern African Development Community (SADC) reaffirmed its stance on the situation in Zimbabwe.

SADC leaders said they will not allow another sham election following the violent 2008 presidential poll runoff.

In a message that resonates with Zimbabwe's situation, incoming SADC chairperson and Angolan President Jose Eduardo dos Santos warned leaders against using violence to coerce voters.

"We have to realise that peace and stability are the backbone of our development. Over the past years, we have paid particular attention to the situation in Zimbabwe, Madagascar and Democratic Republic of Congo. We have tried to find satisfactory solutions through dialogue," said dos Santos. "Countries need to put in place democratic mechanisms and understand that power can be held through free and fair elections. Resorting to violence and war simply brings immeasurable damage to these countries. Political power can be won through free and fair elections in these countries," he said.

Dos Santos speech, made at the closing ceremony of the SADC summit held at Talatona Convention Centre in Luanda, followed a campaign by Civil Society Organisations (CSOs) for SADC to strengthen its democratic credentials.

The CSO's representatives who included Phillip Pasirayi and Dewa Mavinga of Crisis in Zimbabwe Coalition, Dzimbabwe Chimnga of Zimbabwe Lawyers for Human Rights (ZLHR) and Tawanda Chimhini of the Elections Resource Centre submitted that SADC must press Zimbabwe's political leaders to prepare for the holding of genuine free and fair elections under conditions of free political activity without violence or intimidation.

They said within the scope of its mediation mandate, SADC must ensure the re-alignment of the security sector and obtain guarantees that security forces must uphold the country's Constitution and the rule of law and act impartially in the discharge of their duties without interfering in political and electoral affairs.

The CSO's representatives implored SADC to independently monitor and satisfy itself that all military personnel unlawfully deployed across the country have been sent back and confined to their barracks during the entire elections period.

Civil society said SADC must push strongly for the full implementation of the Global Political Agreement (GPA) and ensure that key milestones such as the constitutional making process and a referendum are achieved before the regional bloc pronounces the country ready for elections.

The CSO's called upon SADC to immediately second its representatives to participate in the Joint Monitoring and Implementation Committee (JOMIC) processes and deploy monitors together with the African Union at least six months ahead of elections and at least three months after elections are held to prevent state-sponsored violence and ensure peace in the country.

They implored SADC to ensure that the coalition government reviews the staffing of the Zimbabwe Electoral Commission to ensure non-partisanship,

independence and professionalism in the discharge of the organisation's mandate.

The CSO's expressed concern that President Robert Mugabe's administration had defied a reprimand by SADC to end repression against perceived opponents.

Chimnga said his organisation had recorded 271 cases of people being subjected to harassment, intimidation, arrests and selective prosecution since the SADC Livingstone summit in March.

Chimnga said ZLHR had documented a total of 886 human rights abuses, including harassment, arrests, detention or prosecution between January and August this year. In the majority of cases victims were charged with public violence, criminal nuisance or holding meetings without notifying the police. He said the harassment of human rights defenders also involved raids on premises of non-governmental organisations, assaults of journalists and the disruption of key parliamentary hearings.



Dzimbabwe Chimnga of Zimbabwe Lawyers for Human Rights and Phillip Pasirayi of Crisis in Zimbabwe Coalition addressing a press briefing in Luanda



The other side of Luanda



Prime Minister Morgan Tsvangirai and his delegation



Angolan President Jose Eduardo dos Santos and South African President Jacob Zuma



President Robert Mugabe walks past Ambassador Lindiwe Zulu



SADC Chairperson and Angolan President Jose Eduardo dos Santos