

The LEGAL MONITOR

For feedback please email ZLHR on: info@zlhr.org.zw visit: www.zlhr.org.zw

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



14 June 2010

Edition 49

COST-FREE

Intimidation hits constitution-making

HARARE: The outreach programme for the parliament-led constitution-making process is expected to finally take off this week although reports of intimidation in the countryside are more than likely to affect the acceptability and outcome of the process.

Douglas Mwonzora, a co-chair of the Constitutional Parliamentary Committee (COPAC) confirmed to *The Legal Monitor* last week that all the logistics had been organised, paving way for the 90-day outreach programme which was legally supposed to have started in November last year.

“We have heard reports of intimidation but we hope the police are ready to deal with those unruly elements behind it so that the outreach programme is finished on time,” said Mwonzora.

The constitution-making process is already way behind schedule. Funding problems, disagreements, lack of accountability and reliable information, and political interference by the management committee (comprising the GPA negotiators and the Minister of Constitutional and Parliamentary Affairs) have continuously stalled the process.

The new constitution was supposed to have been completed by July this year.

The proposed new constitution is one of the requirements of the September 2008 interparty power-sharing deal amongst President Robert Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara.

Those who support this process argue that the new governance charter will pave way for free and fair elections, guaranteed human rights, strengthening of the role of Parliament and curtailment of presidential executive powers, as well as guaranteeing media freedoms, and civil, political, social and economic justice. There is no clarity on whether the agreed constitution will be amended by Parliament after the people have spoken, and there is no legal requirement for the transitional government to call new polls immediately after a new constitution is in place.

A new constitution would replace the current Lancaster House Constitution written in 1979 before the end of the liberation war. The charter has been amended 19 times since independence in 1980. Critics say the majority of the amendments have served to reverse protections of fundamental rights and freedoms, and to further entrench the current President's hold on power.

But there have been growing worries that, given reports of violence and intimidation, the outreach process will not reflect people's wishes.

Last week, the Zimbabwe Congress of Trade Unions (ZCTU) described the



Douglas Mwonzora

constitution-making process as a ‘farce’. “We reiterate that the current constitution-making process is a farce and call for it to be halted as we are not guaranteed that the views of the people will be taken into consideration,” said Japhet Moyo, the ZCTU acting secretary general.

The largest labour body in Zimbabwe has suggested that Parliament should enact Constitutional Amendment No. 20 to pave way for



Munyaradzi-Paul Mangwana

internationally-monitored presidential elections, after which a new constitution can be drafted.

The MDC-T last week said in places like Manicaland, Midlands and Matabeleland South intimidation had increased ahead of the launch of the outreach programme, and that there had been “... a spirited attempt in recent weeks by the police to harass and arrest MDC supporters

and officials across the country on trumped-up charges of undermining the President.”

“In Matabeleland North province, the police have rejected notifications made by the MDC to have ‘Real Change Rallies’... Soldiers from Perseverance Barracks in Chakari, Midlands, are harassing and intimidating known MDC supporters threatening to kill them if they participate in the forthcoming constitution-making process.”

Defiant police flout court

NKAYI-Police have defied a court order granted by the Magistrate Court here barring them from interfering with a campaign rally organised by former Nkayi South MP Abednico Bhebhe.

Magistrate Thabenkulu Dube granted an application filed by Bhebhe's lawyer Nosimilo Chanayiwa of Zimbabwe Lawyers for Human Rights (ZLHR) seeking to set aside a police order prohibiting their client from holding a campaign rally in Nkayi.

But no sooner had the ink on the court order dried four police officers barred Bhebhe from proceeding with a campaign rally he

had convened under a tree in Dakamela area, Nkayi last week on Thursday.

Chanayiwa told *The Legal Monitor* that the police officers refused to comply with the court order which had been granted by Magistrate Dube.

Chanayiwa said the police informed her that they had been instructed by their superiors not to allow Bhebhe to hold the campaign meeting even if he had a court order.

“The police refused to adhere to the court order which we showed them. They told us that they have orders from above to stop the meeting,” said Chanayiwa in an interview.

Last week the Law Society of Zimbabwe (LSZ) expressed deep concern about the continued willful defiance of court orders by State actors.

LSZ president Josaphat Tshuma said State actors aggrieved by the decisions of lower courts must appeal against the judgments in upper courts such as the High Court and the Supreme Court.

Tshuma said if unchecked the defiance of court orders may result in members of the public losing confidence in the justice delivery system and will cause “anarchy and lack of respect for our Constitutional order.”

GALZ employees trial commences

HARARE-The trial of two employees of the Gays and Lesbians of Zimbabwe (GALZ) charged with possession of drugs and pornographic material will commence at the end of this month.

Prosecutor Allan Masiya provided the GALZ employees Ellen Agnes Chademana and Ignatius Mhambi with trial dates and court papers for their matter when they appeared in court before Harare Magistrate Don Ndirowei last Thursday.

Masiya tendered written permission from the Attorney General (AG) Johannes Tomana's Office to prosecute the GALZ employees.

First to stand trial will be Mhambi on 30 June while Chademana is expected to be in the dock on 1 July.

Their lawyers David Hofisi and Jeremiah Bamu both of Zimbabwe Lawyers for Human Rights (ZLHR) notified Magistrate Ndirowei that they would apply for the removal of Chademana and Mhambi from remand should their trial fail to commence on the given dates.

The GALZ employees were arrested last month at their Milton Park offices in Harare and charged with being in possession of obscene, indecent or

prohibited articles in contravention of Section 26 (1) (b) of the Censorship and Entertainment Control Act chapter 10:04.

The police charged Chademana and Mhambi with contravening Section 33 of the Criminal Law (Codification and Reform) Act for allegedly undermining the authority of President Robert Mugabe although the charge was not initially brought in court. The police allege that the GALZ employees displayed a plaque of former San Francisco

Mayor Willie Lewis Brown, Jr in their office in which the African-American denounces President Mugabe's homophobia against gays and lesbians.

Chademana and Mhambi, who are out of custody on bail have been barred from travelling for more than 40 kilometres outside Harare without the authority of the investigating officer. They are reporting twice a week to CID Drugs Section at Harare Central Police Station as part of their bail conditions.

Timeline: Maguwu persecution

FARAI Maguwu, a leading human rights campaigner who has vigorously campaigned against alleged military-led rights abuses and illegal mining in the Marange diamond rich fields faces up to 20 years imprisonment if convicted after being charged with publishing falsehoods against the State with the intention to cause prejudice to the security or economic interests of the country.

Maguwu was arrested for allegedly handing over evidence of Marange abuses to Kimberly Process (KP) Monitor Abbey Chikane.

Chikane in turn informed Zimbabwean authorities, known to be brutal in dealing with critics, about Maguwu's evidence. In his defence, Chikane says he informed the authorities because he was afraid of being arrested himself for illegally possessing evidence of military abuses in Marange.

Below is a timeline of Maguwu's troubles.

Tuesday, May 25

Maguwu meets Chikane at Holiday Inn Mutare for 30 minutes. Briefs the KP monitor on rights abuses and illegal mining in Marange. In his report detailing his inspection of the mining of diamonds in Zimbabwe released last week, Chikane says: "A man dressed in black and claiming to be from the Presidency was seated less than a meter away from the KP Monitor and Mr. Maguwu" when the meeting took place.

Wednesday, May 26

A "truckload full of men in suits" pitched up at his home and "they were armed to the teeth", according to an interview Maguwu gave to a private radio station. Police arrest Lisbern, Maguwu's brother in what rights lawyers describe as "hostage arrest".

Saturday, May 29

Lisbern's lawyer and ZLHR regional manager for Manicaland Satellite Office Blessing Nyamaropa is harassed by senior police officers for representing him.

Thursday 3 June

Maguwu hands himself to police in the company of his lawyer Tinoziva Bere.



Farai Maguwu

Friday, June 4

Police refuse to release Maguwu. He spends the weekend in police custody. Police refuse to indicate to lawyers when he would be brought to court or the charges he faces.

Sunday 6 June

An attempt is made to secretly take Maguwu out of cells for interrogation by Detective Inspector Henry Dowa and his team from Harare. Lawyers storm into the office and demand the police to respect Maguwu's rights. Despite the lawyers' protests they are barred from the meeting and the police interrogate him for over an hour in violation of the Constitution of Zimbabwe. Police drive Maguwu to Harare Central Police Station. Lawyers chase the police to escort Farai.

Monday, 7 June

Investigating officer Dowa obtains a Warrant of Further Detention to keep Maguwu in cells after the expiration of the 48 hour detention period, which ended on Saturday 5 June.

Tuesday, 8 June

Farai denies the charges levelled against him in writing. He is transferred from Harare Central Police Station to Rhodesville Police Station. Lawyers are concerned over Farai's chest and

throat infection as well as fever. His breathing is worrisome despite the medicines he is taking.

Farai finally appears in court at Rotten Row Magistrates court before Magistrate Don Ndirowei. Lawyers provide the court with detailed written submissions covering the complaints. The State is ordered to investigate the complaints.

The defence team made up of leading human rights lawyers Tinoziva Bere, Trust Maanda and Johane Zviuya strongly objects to the placing of Farai on remand on the grounds that the facts themselves as stated do not constitute an offence and the section used was not only unconstitutional but it was already the subject to a similar challenge. State counsel Phyllis Zvenyika argues that she is not ready and seeks postponement to Wednesday 9 June.

Wednesday, 9 June

Prosecutor Zvenyika calls the investigating officer Dowa, to give evidence. During Dowa's testimony the contradictions in the State papers become so apparent and so loud that he loses his temper during cross-examination and had to be warned by the court not to point a threatening finger at lawyer Maanda, who was thoroughly cross-examining him.

Dowa apologises saying "I'm sorry" for pointing a threatening finger at Maanda. Dowa calls criticism of Zimbabwe, "demonizing" and appears to think that to be a crime. He alleges that Maguwu earns a living from "demonizing" Zimbabwe and should be kept in jail to prevent him from further "demonizing" the country.

Under cross-examination he admits to the court that he only obtained a Warrant of Further Detention on Monday 7 June well after the 48 hour detention period which expired on Saturday 5 June in the morning. His explanation was that according to his calculation the 48 hours had not expired and he had in any event informed his superiors orally. Dowa signals his intention to travel to South Africa to interview Chikane and collect more evidence.

In a heated exchange over repeated objections by the defence which were upheld by the court the Prosecutor Zvenyika seeks a five minute adjournment of the matter.

The adjournment becomes much longer after she angrily declared during the adjournment that not only would she not return to the courtroom that day but Farai would rot in jail. Lawyers hope that Zvenyika said this in the heat of the moment and that it's not something the Prosecutor would pursue.

Thursday 10 June

The defence objection to Farai being placed on remand is thrown out by Magistrate Ndirowei. Lawyers apply for bail, which Prosecutor Allan Masiya who has taken over from Zvenyika opposes.

Ndirowei declines to place Farai on bail on the basis that the case is serious and that the police are still investigating and there is a risk that Farai would interfere with witnesses. The Magistrate remands him in custody to June 23. Magistrate Ndirowei orders that Farai be examined by a medical doctor and that he be granted access to his medication at prescribed times. Farai had had his medication discontinued whilst in prison.

Friday, 11 June

Lawyers round up preparations to file appeal against the denial of bail and to seek an urgent review of the decision to place Farai on remand.

Hopelessness at Hopley

HOPLEY FARM -At least 150 families are without any homes five years after being forcefully evicted from their dwellings at Porta Farm and dumped at Hopley Farm.

Despite the ongoing allocation of housing stands to other people at the farm, a visit by a team of lawyers from Zimbabwe Lawyers for Human Rights (ZLHR) to conduct a situational human rights training for its clients showed that several residents continue to live in makeshift plastic shacks in Zone 6 of Hopley Farm which is along Masvingo road.

The Harare City Council (HCC), represented by its resident District Officer has allowed the allocation of stands to people other than the original persons dumped at the farm in 2005.

According to residents, the District Officer in charge of Hopley Farm has been allowing the allocation of stands along political preferences. While ‘outsiders’ continue to be allocated stands in Zones 1, 2 and 3 as many as 156 families among

those originally dumped at Hopley Farm, who are suspected to be sympathetic to the Prime Minister Morgan Tsvangirai’s Movement for Democratic Change (MDC) have been denied any stands and remain confined to the slum building up in Zone 6.

Hopley Farm falls within Harare South constituency presided over by Zanu PF MP Hon. Hubert Nyanhongo.

Last month, Local Government, Urban and Rural Development Minister Ignatius Chombo was at Hopley Farm to confer new stands allocated in Zone 2 while former Porta Farm residents living in shacks only a stone’s throw away in Zone 6 were ignored and denied any audience with him.

While new homes are being built around them the majority of residents in Zone 6 live in deplorable conditions without any adequate shelter, barred from investing their meager resources to building proper homes on land

they continue to be denied any title to, or claim to permanent rights associated with such title.

Rangu Nyamurundira, the ZLHR Project Manager for Public Interest Litigation (PIL) condemned the discriminatory manner in which stands are being distributed and allocated at Hopley Farm, to the prejudice of hundreds of people dumped at the farm following their forced eviction from Porta Farm in 2005.

“The Constitution of Zimbabwe clearly prohibits discrimination on any grounds, including political affiliations. The discriminatory conduct of allocation of stands at Hopley Farm, of which the Harare City Council and Ministry of Local Government must be held responsible, is causing many families to be denied and deprived of any exercise of their socio-economic rights,” said Nyamurundira, who conducted the situational human rights training together with ZLHR projects lawyer Belinda Chinowawa at Hopley Farm.

Nyamurundira said although Zimbabwe’s Constitution, did not specifically provide for socio-economic rights, the country is a State party to the African Charter on Human and People’s Rights and the International Covenant on Economic Social and Cultural Rights which clearly oblige the government to guarantee the exercise and enjoyment of the same rights, without any discrimination based on political affiliation, social status or other distinction.

Without any security of tenure and title to their land to which they were forcefully moved, the residents of Hopley Farm’s Zone 6 are unable to claim or exercise their socio-economic rights,” said Nyamurundira.

The human rights lawyer called upon the HCC and the Ministry of Local Government, Urban and Rural Development to ensure the provision of stands, with legal title, to the families originally dumped at Hopley Farm as early as 2005, having been forcefully evicted from Porta Farm.



A tale of Hopley Farm’s two Zones, where others are forced to live in squalor; without the security of title



In the backyard of decent houses being built on allocated stands, a young girl at home among the shacks of Zone 6



A Zone 2 resident’s house built on an allocated stand, only a stone throw away from the shacks of Zone 6



ZLHR Project Manager Rangu Nyamurundira briefs his clients at Hopley Farm

Address Gukurahundi for healing

BULAWAYO-Residents here have categorically stated that there will not be healing in Zimbabwe unless the issue of the *Gukurahundi* massacres is addressed.

This was the view expressed after the screening of a documentary by Zimbabwe Human Rights Association (ZimRights) titled “*Article VII, Voices for Healing*” in Bulawayo last week.

The residents-who included human rights lawyer Kucaca Phulu-said in order of priority and history, the massacres that occurred in Matabeleland and Midlands in the 1980’s should be top of the agenda of the Organ on National Healing and Reconciliation.

The Organ was set up by the transitional government last year but has failed to deliver anything so far.

Zimbabwe has witnessed a number of major conflicts-the most recent being retributive political violence and grave human rights violations which followed the March 2008 elections in which ZANU PF lost in presidential and parliamentary elections to the Movement for Democratic Change (MDC) led by Morgan Tsvangirai.

The Organ was expected, in terms of the political agreement of September 2008, to deal with issues of the inter-party violence which took place after the 2008 elections, and to ensure that such incidents did not occur again. It is clear, however, that many Zimbabweans want the Organ to expand its scope of work.

This was proven in Bulawayo when some people said the Organ needed to address injustices

that related to the *Gukurahundi* massacres in which more than 20 000 people were reported to have been killed by the North Korean-trained Fifth Brigade.

“Without this, the people of Matabeleland will not accept the process. We want someone to take responsibility for the genocide that occurred in 1983, 85-87, and to get a public apology,” said Qubani Moyo, a political commentator.

Some residents said politicians were not the right people to facilitate the healing process.

Judging from the emotions that came out in Bulawayo, if the Organ had taken time to listen to the views of the people, it would have known

that they were not the best placed to be leading the process.

“There is lack of political will on the part of government to bring any sort of healing to the people as they fear retribution. Some of them were chief instigators of the violence while others represent parties that perpetrated violence,” said another resident.

There is a lot of anger among people, with threats of revenge if their concerns are not addressed as a matter of urgency. A lot of work needs to be done to ensure true healing is achieved in the country and to reduce and ultimately eradicate the culture of violence and impunity that exists in the country.

Mbanje grows inside court



A marijuana plant known locally as Mbanje grows alongside flowers inside Rotten Row Magistrates Court in Harare in an area where police spend most of their time. Several people caught with Mbanje have been arrested and charged for breaching the Dangerous Drugs Act