

ZIMBABWE BRIEFING

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A New Constitution is the Foundation for Constitutionalism

It has become quite clear from the three decades after the decolonisation of Zimbabwe that a new people-driven constitution was one of the vital missing links in the democratisation struggle. The negotiated and indeed compromised Lancaster House document is, to a significant extent, responsible for the governance challenges that confront the southern African country today. The link between good governance and a constitution is extremely strong such that the opportunity to draft a new constitution had to be utilised well. It is therefore a tragedy that the process has been marred with unending controversy, but most worryingly, attempts by some sections of the body politic to even disable it.

One of the tragedies of Zimbabwe's fledgling democracy has been the severe politicisation of civil processes. A constitution is a salient document which should serve nobody's narrow interests but an entire nation's. Given the diversity of the Zimbabwe nation with all the different ethnicities, interests and aspirations, respecting the views of the generality of the population is a minimum requirement. Sadly, the tendency has been for some sections of society to defeat the whole idea of a new Constitution albeit at the altar of criticism. Whilst criticism is fair and of course necessary in such sensitive a national process with serious consequences for national development, emerging has been a trend where political incumbents have exhibited evil intentions towards the birth of a new constitution. This does not augur well for a country that obviously needs and deserves a new constitution. To therefore expend energy on attacking the process, rather than suggesting ways of doing it better, is limited.

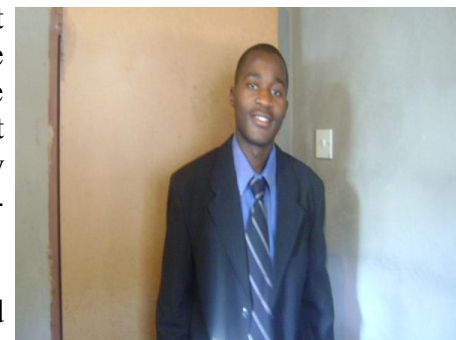
The failure of the 1999 Constitution making process to usher in a new Constitution for the Republic must have provided lessons for any such future endeavour. Sadly, this does not seem to have been the case. One of the most ignored, yet a signif-

icant factor about civic participation in national processes is that there is little accurate information among many citizens. Of course this is worse in rural areas blighted with limited broadcasting coverage to the extent that the level of information asymmetry is shocking. When taken together with the severe curtailment of civil society activities in attempts at political education and general information dissemination, what you have is a citizenry that is scarcely knowledgeable to make a significant impact in some of these processes, including voting itself. It is very detrimental to

sorts of spanners into the COPAC works and render it a nullity. Exactly how did some people know of 'smuggled' issues into a draft that was not yet made public? The onslaught against COPAC is unfair. Today the final draft is out and the same people are already demonising it even when it is evident majority of them have not read the document.

In short, Zimbabwe need to rid itself of self-destructive tendencies which serve no other purpose other than to perpetrate what is clearly a governance challenge. It is important to note

es a lot of hurdles in Zimbabwe. Consequently, this should be the next struggle rather than take one step back in rejecting the constitution.



By Tafadzwa Maguchu

Zimbabwe need to rid itself of self-destructive tendencies which serve no other purpose other than to perpetrate what is clearly a governance challenge. It is important to note that a new Constitution is not an end in itself but a means to an end because it can only function well if it is accompanied by constitutionalism itself. For it is one thing to have a Constitution, and quite another to have it religiously adhered to.

Zimbabwe's progress to have forces that just oppose for the sake of opposing. Even without reading the full draft.

A lot of criticism has been levelled against the Constitution Select Committee (COPAC). Chief among them has been the outrageous claims that somewhere along the way; it ignored and set aside people's views. Further, the script also goes on to say members there then smuggled into the Draft, certain provisions of their own making. That is said to be very devastating and make the whole process a joke. More crucially, they argue that it would be a waste of taxpayers' money and indeed precious national time. For a country claiming bankruptcy, it would be a total insult if these allegations were to be proven. Be that as it may, one is however invited to query these damaging accusations precisely because of the aforementioned orchestrated campaign to throw all

that a new Constitution is not an end in itself but a means to an end because it can only function well if it is accompanied by constitutionalism itself. For it is one thing to have a Constitution, and quite another to have it religiously adhered to. This in other words may simply refer to the rule of law. Giovanni Sartori defines liberal constitutionalism as constituting the following elements: (1) there is a higher law, either written or unwritten, called constitution; (2) there is judicial review; (3) there is an independent judiciary comprised of independent judges dedicated to legal reasoning; (4) possibly, there is due process of law; and, most basically, (5) there is a binding procedure establishing the method of law-making which remains an effective brake on the bare-will conception of law.

The past three decades have proven beyond any reasonable doubt that constitutionalism fac-

New Draft Creates Royal Political Class

ZIMBABWE, we are told, now has a final draft constitution that we as citizens should either accept or reject in a referendum prior to elections expected later this year. The extent of how this document reflects the wishes of the people is a matter of conjecture; save to say the referendum and adoption of the document is one of many political rituals we have to go through with no clarity as to their benefits for citizens of the country.

The nature of the discussions clearly indicates political interest took centre stage from citizens' interests. In this regard, it is folly to expect the document to foster a process of change that resonates far beyond the political sector to transform our lives socially and economically. Even as many people did not know what this constitution is about and talked of the need for food, clinics, roads and jobs during the outreach programme, those statements spoke to the real issues for the people. They want a document that focuses on people rather than political issues and people should be at the centre of the constitutional debate. When politicians met to debate and compromise on the constitution, it is a natural expectation they have people at heart rather than party and personal interests.

We note, however, the new constitution has become an intense battleground for the contrasting political interests and debate has progressively drifted away from our understanding, participation and control. There is no doubt there is a facade of ZANU PF having been forced to backtrack on a number of issues the party was pressing for. On the other hand, nothing seems to have changed much as there appears to be no fundamental changes to policies that guide and influence national governance and the function of key national institutions.

Our political leaders have skirted fundamental issues that include the fact that challenges we have faced over the past decade are largely defined by disrespect for the rule of law, dysfunctional national institutions and their abuse. With or without a new constitution it appears ZANU PF still has an upper hand in defining our political destiny. Even as it appeared ZANUPF's numerous objections and sug-

gestions to the constitution have not been fully entertained, the party successfully took its government of national unity (GNU) partners down a long, winding road in order to bring us back where we have been since 1980. That the pillars of ZANU PF control of this society have remained intact is shameful when, as stated earlier, they are at the centre of the national de-

horse-trading, save for an acceptance and confirmation by the MDCs that our lives are in the hands of ZANU PF, and that we need to give ZANU PF space to deal with its internal issues and re-organise without disturbances.

This constitution is not about the people; instead it allows President Robert Mugabe to ease out

continuation of a political culture that we have known for the past 30 years — that is the dominance of ZANU PF and subjection of the rest to its will.

While Prime Minister Morgan Tsvangirai says this is a social contract and about the people, there is little if any citizen footprint in the constitutional document and process. The odds against the MDCs are well documented and cannot be overemphasised; their failure is to leave so much room for ZANU PF and Mugabe to use this important process to subvert the process of change. By leaving citizens out of the process the MDCs have missed a chance to reconnect with their political base that has driven opposition to ZANU PF for over a decade.

It was and still remains genuine grievances that drive opposition to ZANU PF and these remain unresolved today as desperation increases on a day-by-day basis. Although it has stabilised the socio-economic environment, the unity government has largely failed on issues such as service delivery, industrial revival and employment creation.

Our failure as citizens has been to allow piecemeal "political change" led by politicians to drive us nowhere. The stakes against the people are huge. The levels of social decay, suffering, hopelessness and pessimism are staggering, yet once again we seem to let a chance for change slip through. Rather than "negotiate" ZANU PF's internal issues and insert these into the COPAC draft as constitutional issues, the MDCs should have returned to base and consulted the people on the way forward.

Opinion by Rashweat Mukundu



cline as a result of abuse and inefficiency.

It is extremely sad that the political leadership opposed to ZANUPF had the cheek to inform us that they compromised with ZANU PF on many consti-

of political life without embarrassment and do so outside the control, will and wishes of the majority of people. There is suddenly a strange political convergence among GNU parties even as they appear to disagree. We then ask: does it necessarily

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tutional provisions in order to accommodate ZANU PF's internal politics of succession. We now have the strangest language in a draft constitution, of provisions that will be implemented after six years and others that would come into effect after 10 years. We are not necessarily given details of this political

need a "new" constitution to negotiate Mugabe's exit, or the GNU could simply have negotiated that without taking the nation down the garden path for three-and-a-half years at a cost of nearly US\$50 million. This constitution presents change without change; it marks a false transition and reinforces the

Democratise Rural Zimbabwe

It has been well documented through a seminal study by renowned Ugandan academic Mahmood Mamdani that historically, the ‘urban’ has always been treated as the abode of ‘true’ citizens while the rural has been treated as that of lesser subjects. This is primarily as a direct result of the former colonial state’s distinction between customary and civil law and as a direct result of the policy of ‘indirect rule’.

The Zimbabwean government, 32 years after independence, has been in complicit in perpetuating this bifurcated legal regime, and as a direct result failed to adequately eradicate the challenge of ‘separate development’ for the country’s citizens. Such an inability on the part of government, I would hazard to argue, has been what has in part led to the primacy of political violence in rural and somewhat remote from the urban center areas since our national independence. And this also because of the continuation of the patriarchal role of chiefs and other forms of ‘traditional’ authority which would otherwise not be applicable in ‘urban’ or ‘center’ society.

It therefore becomes important to observe that given the fact that the majority of the country’s citizens reside in the rural areas, there should be a more integrated approach in ensuring that

the law applies equally to everyone, and that the ‘urban’ ceases to have a preferential place over and above the rest of the country .

It is this dual legal and political economic system that has unfortunately informed most government policies concerning rural development, which has tended to be more top down and undemocratic in approach. From the initial post-independence policies of attempting to ‘urbanise’ the rural areas by establishing growth points, through to the setting up of largely ineffective Rural District Councils, there has been no coherent intention to ensure frameworks that urgently deal with rural poverty and disempowerment. This is also the attitude that has informed our mineral wealth and extraction policies in areas such as *Chiadzwa* where diamonds have been more a curse than a blessing for the rural residents of that particular area. The nature of their displacement and lack of adequate compensation is more reflective of colonial era policies where rural folk are treated more as subjects than citizens. The same remains true for the national indigenization policy and what have been referred to as Community Share Development Trusts, where there is the integration of traditional leaders with assumedly eminent personalities from the urban areas to dis-

tribute whatever wealth accrues from mines on behalf of the rural many. The system is not only impositional but generally undemocratic as it perpetuates an elitist (and borderline colonial) understanding of rural development.

Even in relation to matters concerning the provision of basic services to rural areas such as water, electricity, the government rarely acts with urgency. Projects for water retention such as dams, are geared largely for the urban or massive farming projects at the expense of the rural (such as the Tokwe Mukosi project where people are still living in the middle of excavation sites with limited talk of compensation.) Where one looks at health services provision, the major referral hospitals reside primarily in urban areas (even if they are poorly equipped), a reality that has obtained since the country became independent.

It is these challenges that must inform us on our next visit back ‘ekhaya/kumusha’. Not least because we may feel privileged to be part of the urban, but more because that wherever one resides, we should all have access to the same basic rights and services in the country. It is also imperative that the current and any future government of Zimbabwe be pressured into ensur-

ing an integrated framework for the enjoyment of rights and development by all citizens in the country.

This would include a thorough and democratic review of our dual legal system (customary and civil) in order to make it much fairer and to rid it of the legacy of ‘late colonialism’ as described by Mamdani. Furthermore, it is of importance that the government integrates fundamental tenets of its development policy by making the entirety of the country a priority, not just the urban. Where access to water is a challenge for Bulawayo, it must also be equally urgent for rural Gwanda or Mwenezi. Preferential treatment of the urban must not merely be based on proximity to ‘civility’ as though we are still in the colonial era. Where we begin to do this, the many of us that visit our rural homes may become less messianic (in person and in politics) and simply be a part of an equal and general citizenship, without others being treated as though they were subjects.

Takura Zhangazha writes here in his personal capacity.

Civil Society Demands Unconditional end to Machisa’s Persecution



Okay Machisa hugs his daughter outside the prison services after his release on bail

High court Judge, Justice Felistas Chatukuta, granted Okay Machisa bail yesterday, January 29. The judge indicated that the state could not substantiate nor provide reasonable evidence to support all the four submissions put forward to deny the appellant bail. Basing on this argument, Justice Chatukuta went on to set aside the magistrate’s court ruling.

Justice Chatukuta added the condition that the appellant deposits surety in the form of immovable property worth well over US\$50 000, in addition to those put forward by the defense counsel led by Beatrice Mtetwa. The defense counsel had proposed that Machisa deposit US\$500 with the clerk of court, continue to reside at his usual place of residence and report once every week to the police law and order section at the Harare central police station. However Justice Chatuku-

ta said she would not be comfortable to grant bail only on these conditions but rather that the appellant deposit such surety.

The decision taken by the high court was met with a stunned silence, from sympathizers and supporters who had come to the court in solidarity with Mr. Machisa. Speaking to the Crisis report, Mr. Mfundo Mlilo the chairperson of Crisis Coalition advocacy committee and director of the Combined Harare Residents Association rebuffed Justice Chatukuta’s demands saying that,

“We are happy that Mr. Machisa has finally been granted his freedom, but are worried by the fact that it has taken so long, yet the reasons given by his defense had been compelling from day 1. This delay in awarding Machisa



Okay Machisa flanked by friends, family and media people after his release

bail, was a delay in carrying out Justice, and for us, justice delayed is justice denied; Machisa should have been freed by the magistrate’s court.”

Mfundo Mlilo further stated that;

"The release of Machisa is only a tip of the iceberg, we will not be happy until these trumped charges against ZIMRIGHTS are dropped, until the criminalization of the institution stops, through the release of the unjustly incarcerated ZimRights members. Our celebrations will be muted until the state desists from implementing political party resolutions, harassing, intimidating and disturbing the work of NGO's. That will be the day when we celebrate. I also urge people to continue

to come in their numbers when the trail begins"

Mr. Machisa, is set to attend a routine remand hearing tomorrow at the magistrate’s court, which had set down the matter of bail to the 30th of January 2012. It is largely expected that the courts will remand the case and or give a date for trial. The other accused persons in the matter, Leo Chamahwinya and Dorcas Shereini are due back at the magistrates’ court on the 4th of February 2013, while ZIMRIGHTS, the institution, is set to appear at the same courts on the 8th of February 2013.