

Stop-Go constitution-making process now set to move ahead flawlessly

The Crisis in Zimbabwe Coalition last Saturday hosted a constitutional reform update and briefing meeting targeted at Zimbabweans living in South Africa. Honourable Douglas Mwonzora (MP), the Co-Chairperson from constitution select committee, commonly known as COPAC and spokesperson of Movement for Democratic Change (MDC) made the keynote address. In the address, Mwonzora stressed that the writing of a constitution had to be undertaken in accordance to the provisions of the Global Political Agreement (GPA) and focused on three fundamental principles, that is, it has to be people driven, all-inclusive, and democratic.

Mwonzora agreed that the constitution was behind time as it should have been put to a referendum in 2010. He cited a frustrating environment characterised by complete disregard of the rule of law, selective application of the law, where certain people are immune to arrest and others subject to victimisation by the law as one of the reasons for the delay in process.

In addition, the COPAC Co-Chairperson also said the Zimbabwean government was broke and has had to rely on donor communities for funds. The other hindrance delaying the constitution was the distrust among the political parties, resulting in constant fighting on several issues. At present, political parties are fighting over the definitions and approaches to quantitative and qualitative analysis of data.

COPAC has agreed on three principle drafters of the constitution, Hon Justice Moses Chinhengo, Priscilla Madzonga, and Brian Crozier who will be assisted by 17 legal experts.

Last week, the Crisis in Zimbabwe Coalition confirmed that drafting of a new constitution will begin mid-November this year and that the three, non-political actors named above will undertake the task of writing. They are expected to retreat to the Eastern Highlands of Zimbabwe for the writing. Content issues expected to dominate the body of the constitution are expected to include; term limits for the Executive and restrictions on the extent to which it can interfere with other arms of government; decentralisation; land (land audits, the Land Commission etc.), Bill of Rights; and the strengthening of Parliament and representation.

This constitution, if adopted, will be seen as one guiding Zimbabwe to becoming a post-conflict society that will go through a free and fair election which will result in a democratic transfer of power to the eventual winner, in stark contrast to the 2008 episode, recorded as one of the most chaotic and violent elections in the history of Zimbabwe.



Munjodzi Mutandiri of the National Constitutional Assembly (NCA) demanded from COPAC a more active role for civil society actors in the final stages of the constitution-making process. Mwonzora responded by stating that CSOs were most welcome to monitor and observe the entire process.

Meanwhile, the constitutional Parliamentary Committee (COPAC), last Thursday at its head office, announced the completion of the national report.

Briefing the audience, COPAC spokesperson Honourable Jessi Majome (MP) indicated that the report is basically an elaborate of raw data collected countrywide during the con-

ABOVE: Zimbabweans have aired their views on the type of constitution they would like to have.

RIGHT: Douglas Mwonzora says the drafting of the new constitutions begins this month.



pletion within 35 days. Honourable Paul Mangwana, the only Co-Chair-

the drafting team and

- Agreeing on a framework for conflict / dispute resolution.

The workshop has been scheduled for Monday, 31st October in Masvingo and participants are limited to members of the select Committee who will provide political guidance to the process; members of the drafting committee and representative of the ministry of constitutional affairs. Observers and the local media are only welcome for the opening and closing ceremonies. However, the panel, that mainly consisted of members of the sub-committees could not be drawn into giving specific dates or timeframe for the completion of the remaining part citing it is a process whose success does not allow such inflexibility. Mangwana said there are a number of unforeseen challenges that make it difficult for them to give a substantive timeframe.

By Regina Pazvakavambwa, Media Assistant, Regional Office. Additional information supplied by the Information Desk, ZimRights.

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sultative phase. She said that the report is in two components, statistical form, and the other in narrative. What it simply means is that both quantitative and qualitative methods of analysis were used in producing the report; Clues were that the report will be up for public consumption shortly. They also presented a statement revealing that the report carried information reflecting contributions on each of the thematic areas.

In her address, Honourable Majome added that the achievement paves way for drafting of the new constitution, which they anticipate com-

person who was available added that the drafting process would be piloted with a preparatory workshop whose expected outcomes would be:

- The identification of constitutional issues from the national report,
- Consensus on constitutional issues to be included in the constitution
- Gap filling in constitutional framework in areas not covered by field data
- The finalisation of the constitutional framework
- The identification of the constitutional principles which will guide

Beyond normative and institutional reforms, Zim needs personnel changes

Coordinator's Note



dewaMAVHINGA

Pro-democracy political parties and civil society groups have been at the forefront of demanding fundamental democratic reform to put Zimbabwe of the firm path to sustainable peace, stability and economic revival. So far focus has been on Zimbabwe's Inclusive Government to institute normative and institutional reforms, but not necessarily on changes to key personnel within various institutions. I submit that it would be folly to insist on legislative and institutional changes without addressing the important question of the personnel responsible for running such institutions and for promoting democracy, good governance and human rights respect.

The closest that current debate has come to understanding the key role played by persons running institutions has been around the demand for security sector realignment to act in accordance with the dictates of a multi-party democracy system and in the debate around the need to ensure that the newly formed Zimbabwe Electoral Commission (ZEC) is allowed to recruit new staff to assist in the administration and management of elections. This is precisely what is required, radical change that includes getting

rid of the custodians of the old regime and allowing individuals with clean records to take the country forward.

Within the military and other arms of the security sector the problem has not been a lack of legislation of rules prohibiting unconstitutional – partisan conduct. The Zimbabwe Defence Act, the Police Act and the Constitution of Zimbabwe clearly and categorically prohibit partisan conduct on the part of our uniformed forces and prescribe clear penalties in the event of non-compliance. The challenge has largely been a subversion of those rules and regulation done with impunity by those aligned to ZANU-PF who know very well that they political leadership condones such partisan conduct. The only way to clean up and re-align the security sector would be to give an ultimatum to those political generals to choose whether they wish to serve in a professional army or they wish to become full-time politicians, or, new farmers for that matter.

Normative and legislative reforms in and of themselves are meaningless in the absence of corresponding personnel changes. For the ZEC political leadership to be effectively independent and non-partisan, it is necessary that its staff be profes-

sional and independent. It would be naïve to hope that individuals who have served the old regime in a blatantly partisan manner would overnight become sworn democrats with no partiality towards ZANU-PF.

Justice Minister Patrick Chinamasa (ZANU-PF) recently clearly demonstrated the futility of focusing on normative and hallow institutional reforms alone when he addressed the United Nations Human Rights Council with the incredible opening remarks that Zimbabwe is committed the promoting human rights for all. Chinamasa proceeded to point to the existence of a number of laws and institutions in a way that would have worn over the uninformed. But conduct on the ground if so different for what is prescribed in the various laws and rules for institutions.

The Police Act's clear prohibition of political partisanship did not stop the police Commissioner-General Augustine Chihuri from publicly proclaiming his support for ZANU-PF, nor did the Defence Act stop Brigadier General Douglas Nyikayaramba from telling the public that 'ZANU-PF is in him and he is in ZANU-PF.' While the laws of the land compel the police to thoroughly investigate all crimes

and arrest suspected perpetrators, it is on public record that for all the politically-motivated crimes and abuses of the 2008 elections there has been little attempt to hold those responsible accountable.

One of the reason why ZANU-PF probably signed on the a number of commitments to reform in terms of the Global Political Agreement (GPA) was probably because the party knows there is a huge difference between commitments on paper and practical implementation. For this reason our demands for democratization must include a demand for a change in the political leadership of key state institutions.

Newly-elected Zambia president Michael Sata appears to have understood this fundamental principle that to achieve change it is necessary to institute sweeping personnel changes. It would not have been enough for him to call for legislative changes and then appeal to disciples of the old regime to implement desired reforms.

While we desire to have a new democratic constitution that guarantees full and equal participation of all citizens in political processes including marginalized groups such as women, children, youths, people with disabilities and students, it is critical to

ensure that government has the right leaders in place to ensure compliance with the supreme law of the land. Full restoration of the rule of law and abolishing selective application of the law simply requires that senior personnel in the justice administration sector be professional and independent.

The challenge Zimbabwe faces is that over the last three decades, owing to the functioning of a elaborate system of patronage, many unqualified and unprofessional people have been promoted to positions of responsibility on account of their political credentials. These people must go. Gone are the days when being a 'war-veteran' or having a ZANU-PF membership card was sufficient to secure a job or promotion. In this new Zimbabwe merit and professionalism are the primary requirements for work.

It is therefore understandable that some elements would resist reforms because they know that their jobs and livelihoods are not secure. But it is wrong to mislead them and say that the patronage system they benefited from will be extended in perpetuity. Zimbabwe must turn over a new leaf and restore dignity to professionalism.

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Becoming true to gender equality and all its notions

This past month defined one of my most testing and yet so intriguing moments of my life as an activist. I decided to enter into a political contest and needless to say that it was a hard campaign process that demanded a lot of my time and dedication. Moreover, I had to balance all this with my other roles of being a working mother, wife and a whole other host of things. In reflection, I loved the adrenalin the whole month produced but above all, I thought from it were some valuable lessons that one can draw in this journey of life. Women seek to multi-task and keep abreast with world events, their maternal roles and also are at par with their

male counterparts in transforming the world to becoming a better place and this is worth the while as long as one does not lose their sanity. Keeping a balance is crucial at all times.

The world of democracy and good governance is dominated by men who can be ruthless when looking at the role of including women as equal partners. However, as a woman seeking to transform the world at what she thinks is the way to go, working alongside men can be a challenge especially when they do not understand the multiple roles that come with being a working mother. Moreover when they are gender blind, things become even more difficult.

My infant is breast-

feeding exclusively (in a bid to protect her rights and adhere to the national policies of caring for infants). This means she has to be near her supply of food and when expressing is harmful to the mother's wellbeing then there is a challenge.

However, I made the deliberate decision that in this respect, we become inseparable so as to gain balance. It is hard but, doable.

Question: How many people out have decided to place their careers above their family, especially children and today society reflects such neglect through those "dysfunctional" individuals? And when there can be sort of balance to be achieved especially by a woman in this patriarchy dominated

world then is that not a plus? This is not personal but, it is necessary for the duty bearers to come to the realization that the gospel of women's inclusion should come with the necessary practical support systems that enable women to develop beyond the usual confinements.

Unless this happens, as shown in my experiences during the past month, then we are just being religious when it comes to gender equality and equity. Just take a moment and think about it and the kind of difference we could make if we make the necessary changes and render the required support to enable women to become true equal partners in democracy and

good governance issues.

Looking at the flip side, women ought to know their power from within. When we decide to make a difference in this world, we ought to ensure that we ourselves know who we are, what we want and just how we plan to get what we set out to achieve. This means that despite the conditions not being conducive from our own lived realities, we need to figure out how to claim the space we often clamor for.

Moreover, we need to ensure that as women human rights defenders, democracy and governance practitioners, we can give of ourselves and also support other similar minded sisters in ensuring that we get where we set out to be.

I also realized that when all else seems sinking ground, if you are not true to the power within then you might as well give up and forget you can transform this world. It is important that as leaders and especially women leaders we define our own context and fight the good fight in order to see the world become better for everyone else.

Nothing is impossible under the sun, we can do this as women and still maintain a reasonable balance at different levels – after all it is only our species that was blessed with the ability to multi-task so let us go ahead and transform this world!

By Grace Chirenje-Nachipo, an activist.

African Commission must act on Malawi



A scene from the July 20 demonstrations in Malawi.-thestar.com

Below is the Open Society Institute for Southern Africa (OSISA) statement to the 50th Session of the African Commission on Human and Peoples’ Rights, October 2011, Banjul, The Gambia

Malawi

In OSISA’s statement to the 49th session of the Commission, we brought to the attention of the Commission the grave Human Rights situation in Malawi. In this 50th session, we again draw the continent’s attention to Malawi where the human rights situation has not improved. Indeed, it remains precarious and continues to deteriorate.

The Malawi government’s intolerance of Human Rights Defenders - non-state actors, media practitioners, the academic community, and political opponents, has become commonplace. Equally disturbing is the growing culture of impunity within the state security sector and among ruling party functionaries. Human Rights Defenders have become endangered species, bringing back painful memories of the dark days of pre-1993 Malawi under Dr. Hastings Kamuzu Banda. Together with a few other countries, Malawi holds the distinction of never having submitted even a State report to this Commission.

Madam Chairperson, on 20 July 2011, thousands of Malawians took to the streets to peacefully protest against the worsening economic conditions which have made the lives of ordinary people difficult to bear. In the exercise of these constitutionally protected freedoms of association, assembly and movement (Articles 10, 11 and 12), the protesters also sought to challenge government’s sustained assault on the Constitution of Malawi through the abuse of the ruling party’s parliamentary majority, passage of anti-democratic legislation, and the violation of fundamental human rights enshrined in the African Charter on Human and Peoples’ Rights. The peaceful protests were met with brute force, and through the barrel of the gun, police killed 20 unarmed Malawians. Hundreds others were injured. To date, no one has been held accountable for this carnage. Life goes on.

In addition to the escalating threats and arbitrary arrests of activists and Human Rights Defenders – many of whom now live in perpetual fear and some have gone into hiding - on 24 September 2011, a well-known critic of the president and the government of Malawi, university student, Robert Chasowa was killed by unknown person(s). In the absence of an independent inquiry into the circumstances of his death, we can only speculate that those who found his criticisms intolerable may have a hand in his death. In the last few months, offices

of human rights activists and places of residence have been vandalized and set on fire.

It is disconcerting to note that the government of Malawi has shown very little interest in ensuring that those who orchestrate acts of violence and extra-judicial killings are held accountable. Key state officials have propagated hate speech, openly inciting violence and retribution against government critics. Against this background, we endorse the submissions of the Centre for Human Rights and Rehabilitation and reiterate our request for the Special Rapporteur on Human Rights Defenders to urgently consider undertaking a promotional visit to Malawi, and provide hope and protection to Human Rights Defenders in that country.

Swaziland

Swaziland is a country with an absolute Monarchy presiding over a regime that has mismanaged state resources and rendered the nation virtually bankrupt and insolvent. The plight of the citizens of Swaziland was brought to the attention of the Commission during its 49th session. Our statement focused on lack access to justice, erosion of the respect rule of law, abuse of human rights, rampant and endemic corrupt, assault on freedom of press, association, and speech amongst other abuses that are an affront to the African Charter on Human and Peoples’ Rights. As you may be aware, since 1 August 2011, members of the Law Society of Swaziland have been boycotting all the courts in Swaziland.

The boycott of the courts seeks to highlight the subversion of the principle of judicial independence and rule of law in the country. The genesis of the boycott lies in a number of actions by the Government, the Judicial Service Commission and the Chief Justice of Swaziland the effect of which is the denial of citizens’ constitutional right to approach the courts, and the introduction of institutional bias in the allocation and determination of matters before the Courts.

For instance, Practice Direction 4 of 2011, the country’s Chief Justice banned all summons/applications citing the name of the King or the Office of the King, directly or indirectly rendering the Monarch above the law. The Law Society is also aggrieved with the decision of the Judicial Service Commission

– of which the Chief Justice is the chairperson - to refuse to accept a petition drawn by the Law Society against the Chief Justice.

As a consequence of the non-functioning of the courts, citizens of Swaziland have been deprived of their constitutional right to judicial redress. Criminal prosecutions which are at the instance of the State have continued albeit accused persons are being denied their constitutional right to legal representation as a consequence of the absence of defence lawyers. This has given rise to the conviction and imprisonment of unrepresented accused persons, itself a fundamental violation of their human rights. The Government has increased its suppression of citizens’ rights, on the strength that people cannot obtain any judicial redress or injunctions against the state for any violations.

Given that an independent and functioning judiciary is essential to the functioning of any State, we consider the absence of a proper functioning judiciary system as a gross violation of the rights of the citizens of Swaziland. Together with the Law Society of Swaziland, which has lodged a formal complaint to the African Commission on Human and Peoples’ Rights against the Kingdom of Swaziland in terms of Article 55 of the African Charter, we request the Commission to urgently undertake a promotional mission to Swaziland, to investigate the factors and issues giving rise to the prevailing judicial crisis.

SADC Tribunal

As we commemorate 30 years of the African

Charter on Human and Peoples’ Rights, and collectively work to strengthen the evolving African architecture for the promotion and protection of human and peoples’ rights, is it not ironic that in the southern part of the continent, SADC heads of state and government, have decided to suspend the operations of the nascent sub-regional court, the SADC Tribunal? This deprives the peoples of Southern Africa the right of access to justice at the supra-national level.

We appeal to the Commission, to lend support to the efforts of civil society and national human rights institutions, to ensure that unilateral decisions of governments do not undo the continent march towards the realization of more and not less rights for the African people.

Persons with Disabilities

We call on the Commission to reaffirm its commitment to the promotion and protection of the human rights of persons with disabilities by appointing a Special Rapporteur on disability.

Communications

Finally, Madam Chairperson, distinguished commissioners, we join others in expressing concern at the delays in finalizing communications and call on the Commission to prioritize its protective mandate to deal with the backlog of pending communications and avail remedies to the victims who have sought protection. *This statement can be accessed at <http://osisa.org/hrdb/regional/afri-can-commission-must-act-malawi>*

On every Thursday, read

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