

The LEGAL MONITOR

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COST-FREE

Zuze: Prior bungling revealed

HARARE-Fresh evidence pertaining to misconduct by controversial Chipinge Magistrate Samuel Zuze has recently emerged.

In a development that validates lawyers' and human rights organisations' criticism of Magistrate Zuze's dereliction of professional duty, the Attorney General (AG)'s Office has strongly rebuked Zuze for grossly misdirecting 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.

Magistrate Zuze revoked a free bail order which he had granted to Munyaradzi Vutete, a Chipinge farm manager, who was charged with contravening Section 3 of the Gazetted Land (Consequential Provisions) Act for failing to vacate a gazetted farm in May last year.

The Magistrate had initially granted Vutete free bail last year and ordered him to reside at Lot (1) Gungunyana Farm in Chipinge and not to interfere with the new farmer who had seized the farm where Vutete was a farm manager.

But on 13 May 2009, while in the midst of Vutete's trial, Magistrate Zuze revoked the free bail which he had granted to the farm manager and remanded him in custody.

Magistrate Zuze jailed Vutete for 15 days until he was granted bail by the High Court after he petitioned the superior court to review his case.

Magistrate Zuze's misadventures are exposed in the State's response to a bail application which was filed by Vutete's lawyers in which the AG's law officer, Richard Chikosha consented to bail.

In his response to Vutete's bail application Chikosha agreed that Zuze had misdirected himself by revoking bail and imprisoning Vutete.

"Whilst in the midst of the trial the court *a quo* (lower court which Magistrate Zuze presided over) revoked the bail conditions and remanded applicant (Vutete) in custody. This was a gross misdirection by the court *a quo*. The State never complained of the applicant (Vutete) breaching any of the bail conditions and there was no enquiry held prior to the revoking of bail.

....Respondent (the State) humbly submits that the applicant's application has merit and be upheld and the respondent concedes that the applicant's bail be reinstated," read part of Chikosha's response agreeing with Vutete's bail application which he was granted by a High Court Judge to end 15 days of incarceration.

Chikosha only proposed an alteration of Vutete's bail conditions such that the farm manager should relocate from Gungunyana Farm and must not visit the farm at all.

Magistrate Zuze is no stranger to controversy. In 2009 he convicted and sentenced Hon. Mathias Mateu Mlambo and Hon Meki Makuyana, the two MDC Members of Parliament whose respective constituencies are in Chipinge.

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.

In January, Magistrate Zuze blocked the enforcement of a High Court order that would have resulted in him losing access to a farm that he received under the controversial land reform programme.

He convicted four Chipinge 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 sentenced them to a US\$800 fine each and gave them 24 hours' notice to vacate their homes.

In convicting the four farmers, Magistrate Zuze did not disclose that he was holding an offer letter issued in November 2009 for Jahne's Silverton Farm when the farmers appeared before him.

So Magistrate Zuze had a direct interest in the case which, in normal circumstances, would have legally obliged him to recuse himself from considering the matter.

Maya goes on trial

HARARE-Former presidential candidate, Shakespeare Maya, who was recently charged with sedition, will stand trial at the end of this month after Magistrate Don Ndirovei dismissed his application for refusal of placement on remand.

Maya's lawyer, Alec Muchadehama filed the application last Thursday on the basis that the State's facts do not disclose that the former presidential aspirant committed an offence. Muchadehama denied that his client had uttered any words to incite the Movement for Democratic Change (MDC) supporters to rebel against President Robert Mugabe's previous government as alleged by the State.

But Magistrate Ndirovei dismissed the application after indicating that it was likely that Maya had committed an offence.

The former presidential candidate will now stand trial on 28 April on charges of sedition and inciting MDC supporters to demonstrate against the then Minister of Public Works and National Housing, Ignatius Chombo, who he allegedly accused of blocking development in local councils by refusing to approve proposed budgets.

Maya was arrested last month at his Chegutu farm and charged with sedition for the offence he allegedly committed five years ago.

The State alleges that Maya, who joined Prime Minister Morgan Tsvangirai's MDC party in 2005, committed sedition by stirring up 800

MDC supporters to rebel against President Robert Mugabe's previous administration at a rally he addressed in Chitungwiza on 8 May 2005.

Sedition is defined as the crime of "inciting by words or writings disaffection towards the State or constituted authority". Sedition complements treason and martial law.

The police allege that the former presidential candidate incited the MDC supporters to rebel against the government by informing them of the avenues available to oust President Mugabe's administration from power.

Maya is also accused of promoting violence after he refused to concede defeat in the 2005 parliamentary elections which he contested on an MDC ticket against ZANU PF's Sylvester Nguni. The State also alleges that the former presidential contestant threatened to lead MDC supporters to dump sewage at Chombo's residence in protest against his refusal to approve council budgets.

Maya was one of the candidates, including MDC leader Tsvangirai, independent candidate Paul Siwela and ZANU Ndonga's Wilson Kumbula who in 2002 challenged the incumbent, President Mugabe in a presidential election, which was won by the octogenarian leader.

However, the election result was condemned by the European Union and other western governments who responded by imposing targeted travel and economic sanctions against the former freedom fighter and several of his allies.



Shakespeare Maya

Maya is the second high profile politician to be brought before the courts on charges of undermining Mugabe in public.

In January, Constitutional Parliamentary Committee co-chairman Douglas Mwonozora was charged with insulting Mugabe.

This was after he had uttered the following words: "President Robert Mugabe *chikwambo uye achamhanya. Ndaona Mugabe achigeza, tauro muchiuono, sipo muhapwa uye ndebvu hwapepe. Pamberi neMDC, pasi nechihurumende chembavha chinotsungwa vanhu vasina mhosva chichitora zvinhu zvavo*".

Junta threatens Rights Commission work

HARARE-Charged political tensions and resurging rights abuses pose the biggest challenge to the work of the newly appointed Zimbabwe Human Rights Commission (ZHRC), civil society groups say.

Many interested groups view the setting up of Zimbabwe's first ever human rights commission as a key step towards democratisation, but worries remain over how the ZHRC will—in practical ways—tackle growing State-sponsored abuses.

Several farm worker unionists such as Gertrude Hambira (the General Secretary of the General Agricultural and Plantation Workers' Union of Zimbabwe) and other rights activists are still in hiding in and outside Zimbabwe due to fear for their lives following threats by security agents.

Attacks on free speech, media freedom and civil society activities have continued, with State agents playing a leading role in closing democratic space.

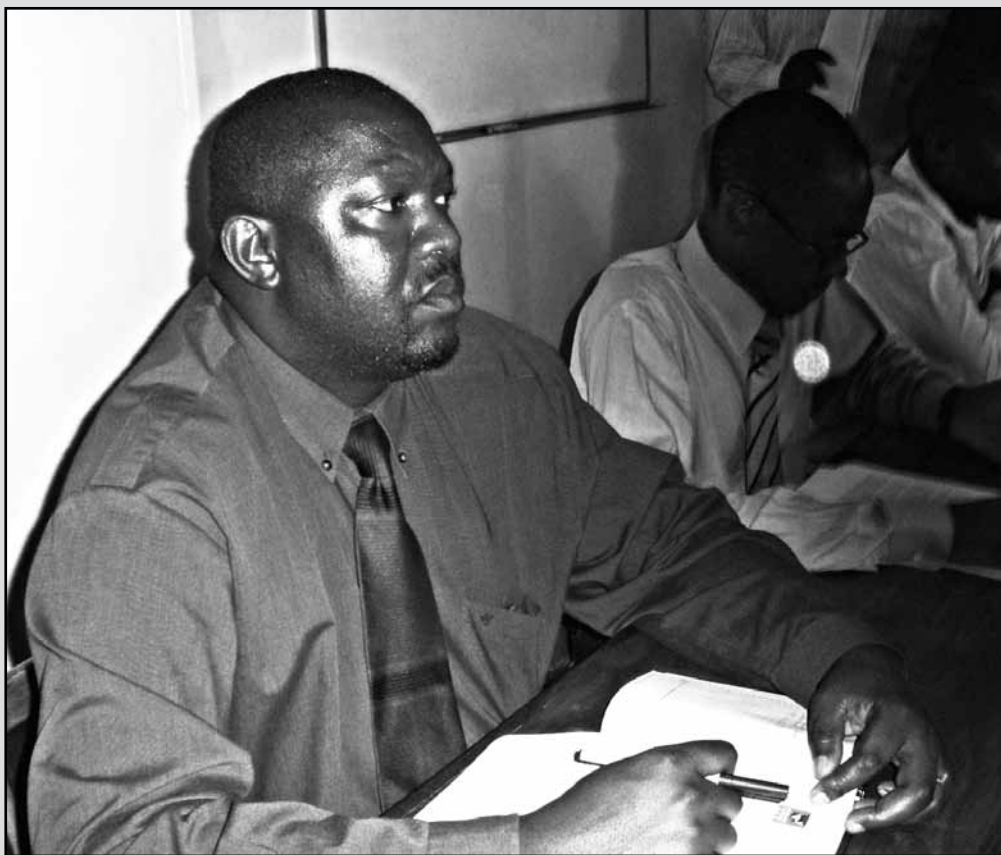
Civil society organisations say the commissioners - some with questionable human rights records themselves - might find it difficult to shed off their loyalty to the political parties that supported their appointment to the ZHRC.

Zimrights, a coalition of rights groups, said continued incidents of rights abuses cast "doubt" on the commission's ability to improve the human rights situation in Zimbabwe.

"Zimrights recently had such incidences as seen by the unwarranted arrest of its National Director and intimidation when it tried to exhibit pictures that depict the journey the country travelled since the foiled Save Zimbabwe Campaign Prayer meeting of March 11 2007 (when police beat up rights activists, including then opposition leader Morgan Tsvangirai).

"The commission is faced with a daunting task, taking into account the country's rights record. While the country clamours for truth-telling as a way of achieving national healing and reconciliation, the police continue to clamp down on any institutions that try to initiate the same," said Zimrights.

Reg Austin, a former University of Zimbabwe (UZ) law professor, chairs the commission. Other members are: Ellen Sithole (a UZ law lecturer), Kwanele Jirira (a social worker with a doctorate in Gender and Labour), Nomathemba Neseni (a social worker) and Carrol Khombe (a professor at the National University of Science and Technology department of Animal Science). Elasto Mugwadi (a former Chief Immigration Officer), Joseph Kurebwa (a UZ political science lecturer who once edited a Central Intelligence Organisation-funded newspaper), Japhet Ndabeni-Ncube (a former Bulawayo mayor) and Jacob Mudenda (a former ZANU PF



Okay Machisa

governor for Matabeleland North) complete the list.

The ZHRC's functions, according to the Constitution of Zimbabwe, are:

- Promoting awareness of and respect for human rights and freedoms at all levels of society,
- Promoting the development of human rights and freedoms,
- Monitoring and assessing the observance of human rights,
- Recommending to Parliament effective measures to promote human rights and freedoms,
- Investigating alleged violations of the Declaration of Rights by any authority or person,
- Assisting the responsible Minister in the preparation of reports to be submitted to regional and international bodies under human rights conventions

Veritas, which monitors legal and human rights issues, said the commission should also persuade the Government to sign the United Nations Convention against Torture and its Optional Protocol.

Zimbabwe is one of the few SADC countries that have not signed this convention.

Bennett still officially on the hook

CHIPINGE-In what might be described as an admission of error, the Attorney General's (AG) office has indicated that it intended to drop charges of "hoarding maize" against the Deputy Agriculture Minister-designate, Roy Bennett.

Bennett had been summoned to appear in court in Chipinge last week to face allegations of contravening the Grain Marketing Board Act by failing to declare 92 289 metric tonnes of maize grown on his Charleswood Estate about nine years ago. The farm has since been seized from him as part of the land reform programme.

A member of Bennett's legal team, Trust Maanda told *The Legal Monitor* that he was still to get official communication on the AG's decision to withdraw the charges of 'hoarding maize' as the prosecutorial authority was allegedly yet to receive Bennett's docket from Chipinge.

"We are not going to rush them with the official communication. When they (AG's office) called about the withdrawal, they said the timing of the new charges was not proper given that the supposed offence happened almost 10 years ago," said Maanda. "Basically, they wanted to appear as saints. I am sure they realized how trivial their case was."

After being served with the summons to appear on 6 April during his attendance at the High Court in Harare on a different charge, Bennett said the maize charge dates back to the time when the army and

the police came to his farm in Chimanimani and confiscated his maize.

"This is just pure harassment and nothing else," said the popular MDC politician at the High Court two weeks ago. Bennett was at the High Court to hear Justice Chinembiri Bhunu's ruling on whether he would be made to defend himself

on charges of banditry, insurgency and terrorism. The judge postponed the ruling to 10 May.

Bennett's lawyers, led by Beatrice Mtetwa, applied for an acquittal at the close of the State's case last month. Mtetwa said the prosecution led by AG Johannes Tomana had failed to make a case against their client.



Trust Maanda



Beatrice Mtetwa

Human Rights Commission faced with daunting task

This long overdue Commission was sworn on 31 March, 2010. It was provided for under the GPA and the Constitution Amendment No. 19, which came into force last year. Under the chairmanship of the distinguished Professor Reginald Austin, the Commission has a mammoth task ahead of it. Despite constitutional guarantees of protection from such abuse, Zimbabwe has a long history of human rights being violated with impunity.

While we continue tolerating a culture of impunity human rights abuses can continue to flourish. Already there are a growing number of reports that intimidation and harassment have resurfaced in some parts of the country following pronouncements by President Robert Mugabe and Prime Minister Morgan Tsvangirai that elections should be held next year. We have still not dealt with the violent crimes committed in the 2008 election period, though the GPA speaks of the role of the State to prosecute these offences. (In the few court cases that have been brought, the State has admitted the complicity of state agents).

Of all the human rights abuses that have taken place in Zimbabwe, that of torture is the most heinous. It involves premeditation and planning, often total isolation, and not only incredible infliction of pain but, the uncertainty of if and when it will end. It is a violation of all that makes us human.

It is hoped that the Commission will persuade the Government to sign the United Nations Convention against Torture and its Optional Protocol. Zimbabwe is one of the few SADC countries that have not signed this convention. [It is several years since Parliament passed a resolution recommending it be signed. It is also hoped that each and every commissioner will read the recently launched report from Crisis Coalition which seeks to expose the use of torture. It tells the stories of political and human rights activists who have been tortured at various locations in Zimbabwe, some for months on end.

Torture Victims Cry Out for Justice

Disbelief, anger, outrage, shame, indignation, pain, sorrow and compassion: these must be among the emotions experienced by those who attended the launching of Crisis in Zimbabwe Coalition's report on torture in Zimbabwe:

Cries from Goromonzi: Inside Zimbabwe's Torture Chambers, during which, through anguished sobs, a victim recounted her ordeals. Rutendo Munengami described how one day in the dead of night in 2003 she was surrounded by a gang of 10 armed men. Her house was ransacked, she was raped, mocked, brutalized, unlawfully arrested and threatened with being thrown into a pool of acid to melt without a trace. She was subjected to all this barbarity and cruelty simply because she and her husband were known supporters of a political party. Munengami spoke for all torture victims and survivors when she declared tearfully: "We want truth and justice, there can be no healing without it and we cannot go into elections with unhealed wounds."

The packed auditorium at the Book Café in Harare, the venue for the occasion, became so charged with emotion that Munengami's cry for justice and restoration of her dignity as a human being became a collective cry, with many in the audience weeping openly and others struggling to remain composed. Munengami's ordeal is one of 23 accounts of torture and brutality, narrated by the victims themselves, which make up Cries from Goromonzi. The book makes painful reading, covering as it does an unimaginable spectrum of depravity, perversity and sadism.

Sexual torture

Sexual violation is a lethal weapon in the arsenal of the merchants of violence and torture, with female victims describing how they were gang-raped (and as a result tested HIV positive after their ordeals), had blunt objects and chilli powder inserted into their private parts or were force marched naked after having their clothes ripped off. Male victims were not spared either and many recount in the book how their genitals were burnt with electric wires, crushed, pierced with sharp objects or tied up with string. The results of sexual torture are pernicious. It undermines the whole identity of the person and affects self image, personal relationships and family life ever afterwards.

Other torture methods used

Torture survivors told how they were subjected to electric shocks, attempted suffocation, and repeatedly having their heads "dipped" in buckets of water. Some were also suspended upside down from what they described as the "torture bridge". Almost all victims were threatened, verbally abused, brutalized and then denied medical treatment. Some of these methods of torture caused a global outcry when they were exposed at the Ahbu Ghraib Prison and Guantanamo Bay after the invasion of Iraq by America and her allies. What a shock it is to discover that the use of these inhuman methods of intimidation, for which the Americans were heavily criticized, including by Zimbabwe, were practised in our country.

Pattern of systematic, organized violence exposed

The testimonies of victims contained in the report prove beyond doubt that the perpetration of violence and torture in Zimbabwe was so systematic that it cannot be described as anything other than organized. There was nothing random and isolated about it. Survivors whose ordeals are recounted in the book include Minister Nelson Chamisa, who was beaten up at Machipisa police station on March 11th 2007 and a few weeks later at Harare International Airport, where he lost consciousness and almost lost an eye and once again had to be admitted to the intensive care ward in hospital. Secretary to the Prime Minister, Ian Makone, was severely beaten at the ZCTU demonstration in 2006 and again when a gang of eight men armed with guns, machetes and iron bars surrounded and assaulted him while he was on his way to the Save Zimbabwe Campaign

prayer meeting in March 2007. Later that same month, armed police and soldiers, arriving in 16 vehicles, broke into his house in Domboshava at 2 am and ransacked it. He was abducted and tortured and only released on bail in July. Victims included journalists Gift Phiri, Andriison Manyere and Luke Tamborinyoka, MPs, election agents, trade unionists, opposition and human rights activists and women singled out for being married to men known to support a political party.

Those who paid the ultimate price

The poignant stories are told of the needless deaths of Tonderai Nhira and Better Chokururama, who both died after brutal encounters with the State security apparatus. Plaxedes Mutariswa, wife of the late MDC-T activist Tonderai Ndira, says she continues to live a nightmare since her husband was gruesomely murdered in the countdown to the run-off election. No one has been charged with the murder. "I do not know what these people did to my husband," she says. "I do not know the pain and suffering he went through and I do not know what his last thoughts and words were. But I want whoever murdered my husband to face justice. Perpetrators should be arrested and sentenced to life imprisonment. You cannot take life and live your life as if nothing happened. As long as it is protecting these people, the inclusive government cannot bring healing to me."

Truth and Justice needed for Reconciliation, Forgiveness and Healing

Prime Minister Morgan Tsvangirai gave the keynote address at the launch, which was held on the anniversary of the day, 11th March 2007, when political and civil society leaders – including himself – were en route to the Save Zimbabwe Campaign prayer meeting and were arrested by security forces and brutally assaulted at Machipisa police station. Mr Tsvangirai was later hospitalised with head wounds.

In his speech he said it was difficult to ignore the cries of the victims of violence and torture and acknowledged there would be no healing as long as the perpetrators of the atrocities refused to unclench their fists. He said forgiveness could not exist in a vacuum and the publication of Cries from Goromonzi removed the veneer of normalcy and enabled the nation to face the truth.

Cries from Goromonzi, which is illustrated with colour pictures graphically showing the horrific injuries inflicted on victims, makes for gruelling reading. It is excruciating to be brought face these unspeakable atrocities perpetrated against defenceless citizens. It makes one ashamed to be a Zimbabwean, but as Zimbabweans we need to read it and know what happened and ensure that it never happens again, for no one can be truly free in a country where the intrinsic value of every human being and the sanctity of life are not upheld.

Veritas makes every effort to ensure reliable information, but cannot take legal responsibility for information supplied.



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Fostering a culture of human rights in Zimbabwe

Church takes charge of disputed farm school

NYAZURA-The Methodist Church in Zimbabwe (MCZ) has taken over the administration of a school on a farm that is at the centre of an ownership dispute.

The take over follows a request from Takawira Zembe, who grabbed Minverwag Farm at Clare Estate Ranch farm from Luke Tembani, a pioneer indigenous commercial farmer.

Zembe recently petitioned the MCZ to take over as the school responsible authority at Chimwanda Primary School which was previously held by Tembani before his eviction from the farm.

MCZ has since appointed Reverend Obert Shatai as the Minister in Charge at Chimwanda Primary School.

Shatai confirmed the takeover when reached by The Legal Monitor and referred all questions to the MCZ presiding Bishop only identified as Sithole.

Shatai will be responsible for implementing the church's policy at the school.

Tembani, who became one of the country's first black commercial farmers shortly after independence in 1980 was evicted from his Minverwag Farm at Clare Estate Ranch farm in Nyazura by Zembe last October. This was in defiance of a Southern African Development Community (SADC) ruling barring his eviction. Tembani had occupied the farm for the past 26 years.

He built the farm school in 1986, which provided free education to 321 pupils from Grade 1 up to Grade 7.



It says it all....

The huge cost incurred during the construction of the farm school was one of the reasons why Tembani ended up failing to service his debts to Agribank formerly the Agriculture Finance Corporation (AFC).

The Windhoek based Tribunal recently ruled that the repossession and sale of the farm by the State-

run Agribank in order to recoup an outstanding loan from Tembani was "illegal and void."

The regional court ordered the government to take all the necessary measures through its agents not to evict Tembani or his family from the property and to stop interfering with his use and occupation of the farm.

But the government has refused to comply with the regional Tribunal's order. Justice and legal Affairs Minister Patrick Chinamasa unilaterally pulled Zimbabwe out of the SADC Tribunal, a decision, which was disproved by Prime Minister Morgan Tsvangirai.

Beware of the ides of June

NYAZURA-The SADC Tribunal will, in early June, hear an application by some commercial farmers to recommend the suspension of Zimbabwe from the regional body after it failed to comply with the court's ruling ordering Harare to stop the "land seizure programme".

David Drury, a lawyer representing the farmers, told *The Legal Monitor* that his clients wanted the Namibian-based court to declare Harare to be in contempt of the Tribunal ruling. The 78 commercial farmers, led by Mike Campbell, in November 2008 won a landmark ruling from the SADC Tribunal ordering Harare to compensate them for their farms which had been seized during the chaotic and violent land reform programme.

"We want a *declarator* that the government is in contempt of court and the Tribunal must find appropriate penalty on Zimbabwe," said Drury of the matter, which will be heard on 1 June.

In January this year, the High Court turned down an application by the farmers to register the 2008 SADC Tribunal ruling for enforcement in Zimbabwe. Justice Bharat Patel said it was in the national interest that the land reform programme should not be reversed. But he dismissed an argument by Harare that it was not bound by the Tribunal.

"The government is bound by the Tribunal's decision. So we want the Summit to deal with the matter otherwise the Tribunal's rulings become of academic value if signatories decide not to be abide by the treaties they are part to," said Drury. "Domestic law must conform with the international treaties a country would have signed."

After Justice Patel's ruling earlier this year, the farmers reverted to the SADC



Deon Theron: Commercial Farmers Union president

Tribunal, asking the court to refer the defiance of the order to the regional body.

In their application made on 12 February 2010 to the Registry of the SADC Tribunal, the farmers are asking the Tribunal to declare "... the continued failure of the Government of Zimbabwe to comply with the judgments and orders of the Tribunal... by actively fostering and/or allowing without just excuse the continuation of the land seizure programme (including arrests, prosecutions and imprisonment related thereto) ... to be in violation of the Treaty and other international law obligations of Zimbabwe, and to be in continued breach, defiance and contempt of the Treaty and orders of the treaty".

They are also seeking that the Tribunal refer "... urgently to the SADC Summit, calling upon it to consider without further delay, measures under the Treaty to terminate or suspend the membership of the respondent (Zimbabwe) from SADC and/or to impose such other measures against it as may serve to ensure its adherence forthwith to the Treaty and the judgment and orders of the Tribunal".

Pending the urgent determination by the Summit of the matter, the farmers have asked that the government be ordered to comply with and carry out the previous orders of the Tribunal with immediate effect.

"This application will not be a protracted matter in light of the fact that the government of Zimbabwe has repeatedly stated it will not continue to participate in further proceedings in the Tribunal," reads part of the statement. "We have instructed our lawyers to apply to the Registrar of the SADC Tribunal, and we trust that this application will be heard as a matter of urgency. The urgency is laid out in the papers regarding the severe danger to the lives, liberty and property of tens of thousands of people. It is imperative that the matter is heard very soon if the suffering of these people is to be addressed."



Justice Minister Patrick Chinamasa: says SADC Tribunal rulings are irrelevant to Zimbabwe

Govt officials ban ZESN

Government officials have stopped the country's biggest electoral watchdog from conducting electoral reform outreach workshops in Mbire, a rural district in Mashonaland Central Province.

The Zimbabwe Election Support Network (ZESN), which groups over 30 organisations, said government officials threatened unspecified action on those who wished to participate or go near the venue of the workshops.

According to an alert issued by ZESN, the workshops were supposed to be held last weekend to sensitise the Mbire communities on the various options available for electoral reforms, exploring the pros and cons of each. The issues for discussion included the constitution-making process, electoral systems, electoral management

bodies, systems of governance, as well as encouraging peace and tolerance in the reform processes.

ZESN said the District Administrator (DA) for Mbire had initially granted permission for the workshops to proceed, but canceled them at the last minute, reportedly on Provincial Governor Martin Dinha's orders.

"This act reveals the levels of intolerance still prevailing in some parts of the country. ZESN regards this incident as repressive and manipulative since the community was denied their right to information regarding such pertinent issues as the constitution-making process in which everyone has the right to information," reads the ZESN alert. ZESN added that the Mbire DA described the organisation as "an animal that they did not want to see in the area."