

ZIMBABWE HUMAN RIGHTS



ALERT

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Zimbabwe
HUMAN RIGHTS
NGO Forum

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Actually, 93% of Zimbabwean voters voted for this Constitution. It was the Parliament of Zimbabwe that passed the Constitution into law. It was a Zimbabwean President who signed the Constitution into law. Therefore, there is nothing western about demanding adherence to constitutionalism.

BEATRICE MTETWA

22 May 2021

KEYNOTE SPEAKER AT THE LAUNCH OF CLC



Zimbabwe Human Rights Alerts is a monthly newsletter published by the Zimbabwe Human Rights NGO Forum (the Forum). The newsletter provides insight into the human rights situation in Zimbabwe from the programme activities conducted by the secretariat and 22 institutional members of the Forum.

SPECIAL EDITION: IN DEFENCE OF THE PEOPLE'S CONSTITUTION

MALABA GETS KICK IN THE TEETH

Former Chief Justice Luke Malaba received a proverbial kick in the teeth when a panel of High Court judges ruled that he had ceased to be the country's chief justice from 15 May 2021 when he attained the retirement age of 70. The ruling was made following a court challenge by the Forum Executive Director, Dr Musa Kika, against President Mnangagwa's decision to extend Malaba's tenure of office.

Dr Kika filed an urgent court application after the government, with the support of pliant parliamentarians, rushed to amend provisions of the Constitution dealing with the term of office of judges of the Supreme Court and Constitutional Court extending the retirement age from 70 to 75. The amendment passed a few days before Malaba reached the retirement age was specifically designed to extend his tenure of office. However,

Section 328 of the Constitution requires holding a referendum where an amendment Bill seeks to amend a term-limiting provision.

Section 328(7) of the Constitution makes it clear that any amendment to a term-limit provision does not apply to any person who held or occupied that office at the time before the amendment. The High Court, therefore, ruled in Kika's favour. Speaking at the end of the hearing,

Dr Kika said, "This is a victory for the people of Zimbabwe and shows that when citizens arise to demand justice, it can be achieved. The defence of the Constitution is every Zimbabwean's right. The supreme law cannot be changed as if people are changing the Constitution of a burial society. The government should respect the will of the 94% voters that said yes to the Constitution in 2013."



The court sat for over 10 hours from 2pm on 14 May to past midnight on 15 May, hearing arguments on the merit of the case. The ruling was described as historic as it flew right in the face of the Executive who were desperate to keep Malaba in office. The government has appealed the High Court's decision, and the appeal is yet to be set down. said Rose Hanzi, Director of Zimbabwe Lawyers for Human Rights.

Some believed the attempted extension was in preparation for the 2023 elections that government probably knows will be contentious. Malaba was instrumental in handing victory to President Mnangagwa in the contentious 2018 presidential election.

.....THE LAST KICKS OF A DYING HORSE?

The Minister of Justice, Honourable Ziyambi Ziyambi, and the Attorney General, Prince Machaya, as respondents in the Malaba case appealed with the Supreme Court challenging the Zhou judgment that condemned Luke Malaba to retirement.

The appeal and the behaviour displayed around the case betray government desperation.

The Executive was shaken to the core by the judgment that Honourable Ziyambi misguidedly attacked the credibility of the High Court as led by the then Judge President, Justice George Chiweshe. He questioned the allocation of cases by Justice Chiweshe to Justice Zhou as suspicious. Ziyambi further undermined the panel of judges led by Justice Zhou and described it as a “night court” and “foreign forces.”

“I want to make it clear today that we do not accept the decision of the High Court. We have a serious

Chief Justice Luke Malaba

HAPPY Birthday & Happy Retirement

Justice Malaba turns 70 this week. We would like to wish him a happy birthday and a very peaceful retirement. President ED Mnangagwa rushed through an unconstitutional constitutional amendment just so Malaba could stay in his job and do ED's bidding. We say 'No! Stick to the valid constitution that the People voted for in 2013!'

4 Days to Go to Chief Justice Malaba's birthday...

#ResistDictatorship

Saturday 15

situation of a Judiciary that has been captured by foreign forces in this country...We are going to poke the enemy in the eye and confront it," the justice minister unreservedly attacked the judiciary without holding back.

The comments by Honourable Ziyambi drew the ire of the legal profession casting doubt on his credibility as an officer of the court.

"The statement by the Minister of Justice, Legal and Parliamentary Affairs does enormous disservice to Zimbabwe and its citizens and sends the wrong message to all those who cherish justice and the rule of law," said Zimbabwe Lawyers for Human Rights (ZLHR) in a statement. ZLHR was representing the Young Lawyers of Zimbabwe in the Malaba case, which was joined with the Musa Kika challenge.

The Law Society of Zimbabwe (LSZ) weighed in and described Ziyambi's statement as contempt of court.

"We have carefully considered the statement and we are of the view that the statement is contemptuous of the court that dealt with this matter. A litigant aggrieved by a court decision has a right of appeal, and such displeasure must be addressed through an appeal filed at court. A public statement attacking a court of law has the effect of ridiculing the judiciary thereby diminishing public confidence in the institution,"

said the LSZ in a statement.

In a desperate move by the former CJ, Malaba returned to work upon the lodging of the appeal. However, it is an open secret that Malaba is careful in his consideration of duties to delegate to the Acting Chief Justice, Justice Gwaunza. Fully aware that he is skating on thin ice, Malaba did not preside over the swearing in of the Constitutional and Supreme Court judges despite the appeal.

"He claims he's lawfully in office. But he skipped the swearing in of ConCourt judges last week. Today he skipped the swearing in of Supreme Court judges. The man is unsure. You can't have your cake & eat it,"

noted constitutional law expert, Dr Alex Magaisa.

Justices Tsanga and Chirawu-Mugomba may have dismissed the contempt of court charges laid against Malaba in the High Court by Dr Musa Kika but it remains a puzzle how the former Chief Justice insists on occupying the position when his reputation is clearly on the line. Suspected efforts to secure a ruling in Malaba's favour in the contempt of court hearing led to the recusal of Justice Chinamhora. The judge admitted to meeting with the secretary of the Judicial Service Commission, Walter Chikwanha, after he had been allocated the matter. The JSC is an interested party in the Malaba saga and many justifiably suspect Chikwanha had tried to influence Justice Chinamhora.

The desperate conduct exhibited Malaba, Minister Ziyambi and Walter Chikwanha betray a worrying potential underhand agenda.

PARLIAMENTARIANS BETRAYED THE CITIZENS

Thousands of Zimbabweans at home and abroad converged virtually on 6 May and 22 May to say NO to undemocratic constitutional amendments that were being fast tracked through parliament. Citizens, constitutional experts, artists and civil society were unequivocal in condemning the recently passed constitutional amendments which are designed to benefit specific individuals. Speakers at the virtual constitution rally and the

launch of the Constitutional Law Centre (CLC) denounced amendments to a constitution that is not even 10 years old. In 2013 about 95% of voters during the constitution referendum voted yes to the new Constitution as the supreme law governing Zimbabwe and the major born of contention is government and parliament's disregard of these voices in amending the Constitution.

Speaking at the constitution rally, Falon Dunga a youth activist and university student expressed the anxiety majority of Zimbabwe.

“I stand in solidarity with speaking against dictatorship. MPs betrayed millions of Zimbabwe. We are a step from being a tyrannical state where power is consolidated in the hands of one person.”

Janah Ncube, a policy adviser and governance expert added her voice against the arrogance shown by parliament and government saying, “The Constitution is the codification of what we want as citizens and what is happening is not we said we want,” declared. She also responded to government criticism and labelling of citizens defending the Constitution and said, “The categorisation as regime change activists for speaking on what citizens desire is meant to silence those that want a better Zimbabwe.”

The constitution rally and launch of the CLC were also platforms for ideas and options available

to Zimbabweans to defend the Constitution. According to investigative journalist, Hopewell Chin’ono, the solutions for Zimbabwe’s problems lies in ensuring that communities understand the link between their problems and lack of Constitutionalism. He urged young people as the agents of change to go out into the communities and explain to their mothers and parents why the Constitution matters.

Youth activist and advocate of constitutionalism, Namati Kwekweza, added her voice on the role of the youths and expressed concern at provisions of amendment number 2 to the Constitution that give the president unlimited powers to handpick judges of the Supreme Court and Constitutional Court.

“We can no longer have justice because the very courts that should give us that are now under the control of the president. Let us organise ourselves as young people, lets inform those in rural areas,”

said Kwekweza.

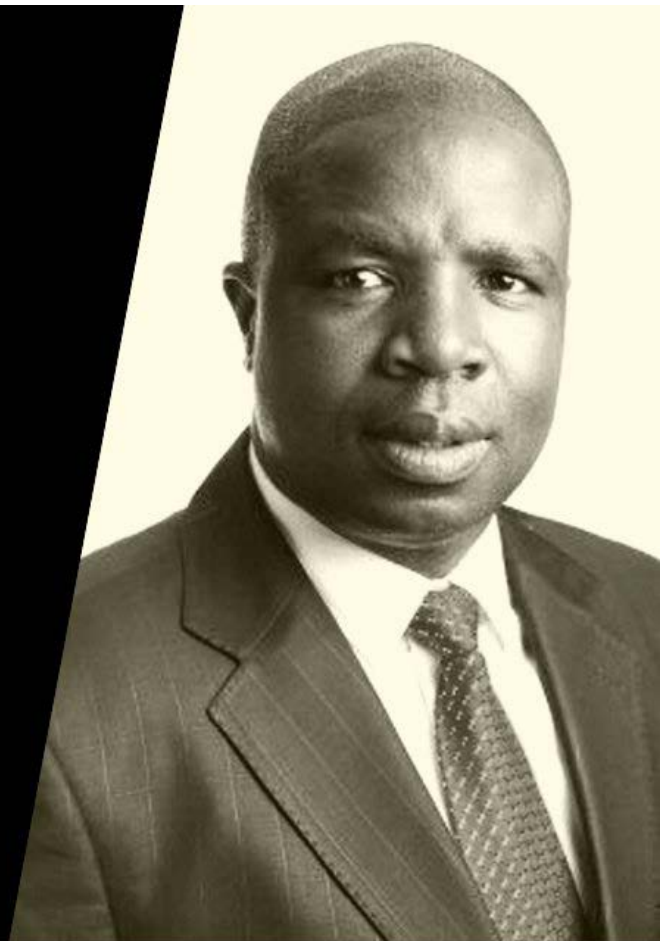
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I see the establishment of the Constitutional Law Centre as a fulfilment of a long standing spirit of ordinary Zimbabweans to take decisive leadership in determining the future of the country.

DEPROSE MUCHENA

22 May 2021

PANELLIST AT THE LAUNCH OF CLC



Following the launch of the CLC, the struggle to promote respect and upholding of the Constitution is expected to intensify in the coming months on the legal front, in physical and virtual meetings, and awareness campaigns targeting Zimbabweans in rural and urban areas. The message is clear – We say NO to an undemocratic constitutional amendment to the people’s Constitution.

You can access the **LEARNING TO WALK REPORT** that gives an overview of the Constitution of Zimbabwe’s journey from popular vote to decimation on this [link](#).

WHAT IS THE CONSTITUTIONAL LAW CENTRE?

The Constitutional Law Centre (CLC) is a consortium of 6 organisations that are involved in research and advocacy regarding constitutionalism and human rights. They are ZimRights, Centre for Applied Legal Research, WeLead Trust, Women’s Institute for Leadership Development, Justice for Children Trust, and Zimbabwe Human Rights NGO Forum. Together, the organisations bring an array of skills and resources that set the CLC on a firm foundation to promote, defend and protect the Constitution.

The CLC is designed to ensure that its output feeds into the work of the consortium partners, providing intellectual leadership in research and development. We are united in the belief that as the supreme law of the country, citizens’ awareness of the Constitution is essential for developing and enhancing a culture of constitutionalism and the rule of law.

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REASONS WHY AMENDING THE CONSTITUTION IS BAD?

1. Amendments must not be frequent. Zimbabwe has no need for over 20 amendments in less than 8 years.
2. These amendments are eroding separation of powers and we are mutilating our system of governance.
3. We have amendments targeting individuals. We are amending laws just to accommodate individuals, but constitutions are meant to be for posterity.
4. Amendments to the Constitution are a monumental disregard of the people’s will. People spoke and said NO to these amendments, and amending the Constitution is an anti-people move.
5. What we are doing is taking giant steps backwards. Our leaders were not sincere in 2013 when we crafted the new Constitution. Some who fought so hard for this Constitution are working so hard to undo it. Perhaps 2013 was not our turning point.

WHAT THEY SAID DURING THE RALLY

Thomas Mapfumo

Kuda kuchinja constitution ihwaro yekuvandudza kuti varambe vari pachigaro. Vechidiki ngavasimuke varwire kodzero dzavo. *(Amending the Constitution is the foundation of their efforts to remain power. The youths should rise and fight for their rights)*

Dr Ibbo Mandaza

The blatant assault on the Constitution, the recall of elected MPs we voted into parliament can be no better example of assault on democracy. Should we go into an election we know the results of 2 years before or do we take action?

Hopewell Chon’ono

Young people you are the agents of change. Go and explain to your parents and grandparents why the Constitution is important. Make the discussion relevant to them.

Hopewell Chon’ono

The Constitution states how revenue should be utilised but roads are not fixed because ZANU PF is violating the Constitution. Salaries are low because the RBZ is not independent as stipulated in the Constitution.



STATEMENT BY ZIMBABWE HUMAN RIGHTS ASSOCIATION ON THE ATTACKS ON THE CONSTITUTION

The Zimbabwe Human Rights Association (ZimRights) welcomes the ruling by the High Court of Zimbabwe on 15 May 2021, in upholding the integrity of the Constitution of Zimbabwe and confirming what we have always said about the illegality of Constitution Amendment Bill Number 2 which was hastily rushed through Parliament and signed into law by President Emmerson Mnangagwa on 7 May 2021.

The High Court, following an urgent court application by Dr. Musa Kika of the Zimbabwe Human Rights NGO Forum (to which ZimRights is a member) and the Zimbabwe Young Lawyers Association (ZYLA), ruled that section 186, which is the amendment attempting to extend the tenure of the Chief Justice, the judges of the Supreme Court and the Constitutional Court, does not apply to the judges currently holding such an office because of section 328 (7) of the Constitution. The court ruled that Honourable Luke Malaba had ceased being a Chief Justice and a Constitutional Court Judge at midnight on 14 May 2021 when he turned 70. We thank the former CJ for his service to the nation and wish him a happy birthday and retirement.

ZimRights welcomes this decision as a victory for the Constitution and a victory for the people of Zimbabwe. Since January 2020, ZimRights has always insisted that politicians must keep their hands off the people's Constitution and urged citizens to rise in defence of the Constitution as this is a war against authoritarianism. At the #ResistDictatorship Constitution Rally attended by thousands of patriotic Zimbabweans on 6 May 2021, thousands of Zimbabweans warned President Emmerson Mnangagwa not to sign the bill and demanded Honourable Malaba to step down as the Constitution demands.

ZimRights is however appalled by the response by Minister Ziyambi Ziyambi, the Minister of Justice, Legal and Parliamentary affairs who in response to the High Court ruling has threatened 'to poke the eyes of the judiciary' because they reached a decision that is not favourable to the Executive's authoritarian plans for the country. The statement by Ziyambi Ziyambi must be condemned as an attack on the independence of the judiciary and a threat against the personal security of the judges who heard the case. The Minister has indicated that he plans to use his political powers to undermine the judiciary. Indeed, he has already shown great contempt for the judiciary in a manner that warrants criminal sanction. Section 164 of the Constitution of Zimbabwe guarantees the independence of the judiciary. Section 164 (2) states that the independence, impartiality and effectiveness of the courts are central to the rule of law and democratic governance. The Constitution goes on to state that neither the State nor any institution or agency of the government at any level, and no other person, may interfere with the functioning of the courts.

By making threats against the judges, calling them 'enemy' and threatening to 'poke their eyes', the Minister is committing a grave offence against the Constitution and we strongly rebuke him and demand that he keeps his hands off the judiciary and the Constitution.

While the Constitutional challenge by Kika and ZYLA is just one among many, the battle for the defence of the Constitution is just beginning. The people of Zimbabwe will not rest until the return to Constitutional order.

**Hands off the Constitution.
Hands-off the Judiciary.
#ResistDictatorship**

MALABA'S BIRTHDAY

02

DAYS TO GO



ED has decided to extend Chief Justice Malaba's tenure by another **5 years** because of unconstitutional amendments to our Constitution. We say '**No! Retire on your birthday** according to the Constitution the People voted for in 2013!'

#ResistDictatorship

22 May 2021, 8th Anniversary of the
Zimbabwean Constitution



A constitution is a product of a
collective imagination of the people.
But it's not enough just to put it on
paper. It is something that we have to
live and to experience.



Dr. Alex Magaisa



Speaker at the Launch of CLC Special
Report - 'Learning to Walk.'

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**Have you been harassed?
Have you been assaulted?**

**TO REPORT CASES
AND RECEIVE FREE ASSISTANCE**

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