



2023 HARMONISED ELECTION DAILY HUMAN RIGHTS MONITORING REPORT

16 August 2023 - Day 3

1.0 Introduction

This report captures human rights developments on Day 3 (16 August 2023) of the daily human rights monitoring reports issued by the Zimbabwe Human Rights NGO Forum (The Forum).

2.0 Methodology

Information contained in this report is derived from verified media reports, information from members of the Forum and civil society reports.

3.0 Highlights of the Week

- Constitutional Court declines Kasukuwere's application for leave to appeal against the Supreme Court decision that upheld the High Court ruling that disqualified Kasukuwere from contesting in the 23 August 2023 poll to be considered an urgent application.
- High Court gives ZEC and CCC 24 hours to agree on the urgency of CCC's application to compel ZEC to avail the final voter's roll.
- Allegations of command voting from ZRP Kwekwe officers emerge.
- ZEC was accused of illegally printing and distributing ballot papers in violation of peremptory provisions of the Electoral Act.
- Appeal for assistance for 42 CCC supporters who were arrested while participating in a peaceful car rally.
- Mwonzora denied permission to hold a peaceful demonstration by ZRP
- CCC files an urgent application demanding ZEC provide information on ballots printed for the elections
- Former Liberian President, Sirleaf Johnson urges Zimbabwe to uphold the AU Charter on democratic elections

4.0 Emerging Issues

4.1 Constitutional Court declines to hear, as an urgent matter, Kasukuwere's leave to appeal against the Supreme Court ruling that upheld the High Court judgment that barred his presidential election bid

On 16 August 2023, Chief Justice of the Constitutional Court, Luke Malaba declared independent presidential candidate, Saviour Kasukuwere's appeal "not urgent." Kasukuwere filed an application in the Constitutional Court appealing against the 28 July 2023 Supreme Court that upheld the 12 July 2023 ruling by Harare High Court Judge, Justice David Mangota, that effectively barred him from contesting in the presidential election. Kasukuwere has endured a protracted battle with the courts since 26 June 2023, after Lovedale Mangwana successfully argued that Kasukuwere was not eligible to contest in the harmonized elections. A synopsis of the legal battle is summarised below:

- On 26 June 2023, Lovedale Mangwana filed an urgent application in the High Court in which he argued that presidential candidate then, Saviour Kasukuwere was not eligible to contest in the upcoming elections. The premise of the application was that Kasukuwere had not been resident in any constituency in Zimbabwe for 18 consecutive months and was thus no longer a registered voter.
- On 12 July 2023, Harare High Court Judge Justice Mangota ruled in Lovedale Mangwana's favour thereby effectively barring Kasukuwere from contesting in the presidential election race.
- On 13 July 2023, Kasukuwere's legal team successfully filed a Notice of Appeal challenging the High Court ruling by Justice Mangota.
- On 28 July 2023, the Supreme Court upheld Justice Mangota's ruling.
- On 7 August 2023, Kasukuwere applied for direct access to the Constitutional Court to challenge the nullification of his presidential candidature. Kasukuwere wanted the Constitutional Court to confirm that the 12 July 2023 ruling by Harare High Court Judge, Justice David Mangota, was invalid and of no effect unless confirmed by the Constitutional Court. He argued that the Supreme Court, on 28 July 2023, had delivered a patently wrong judgment by confirming the High Court ruling.
- On 8 August 2023, the Constitutional Court declined Kasukuwere direct access to the Constitutional Court. The Constitutional Court ruled that his application was disguised as an appeal against the Supreme Court ruling. This meant Kasukuwere had to go back to the Supreme Court to appeal against the 28 July 2023 Supreme Court decision that upheld Justice Mangota's ruling.
- On 16 August 2023, the Constitutional Court turned down Kasukuwere's application for leave to appeal the Supreme Court ruling. Kasukuwere wanted the application to be considered urgent. However, Chief Justice Luke Malaba effectively declared that:
 - i. The application for leave to appeal could not be considered an urgent application as the stages reached in the electoral processes, the imminence of the election on 23 August 2023 and the nature of the matter for determination militate against a decision that the application be deemed urgent.
 - ii. The effect of the decisions of the subordinate courts is that the electoral processes currently underway are lawful and that therefore.
 - iii. Kasukuwere's application for leave to appeal should, in the circumstances follow the ordinary procedures prescribed by the rules of the Court.

4.2 High Court sets down CCC application to compel ZEC to avail final voter's roll to 17 August 2023

Harare High Court gave the legal teams from the Citizens Coalition for Change (CCC) and the Zimbabwe Electoral Commission (ZEC) until the end of the day on 16 August to reach an agreement on the urgency of the matter in which CCC wanted ZEC to avail the final voters' roll, which they claim had not been released despite numerous requests. The Harare High Court further ruled that if both parties failed to find each other on the critical matter of the final voter's roll and list of polling stations, then the matter would be set down for hearing on 17 August 2023.

Wheelchair-bound and in a hand plaster, human rights lawyer, Obey Shava appeared in court as part of the CCC legal team in a defiant stance following the recent brutal attacks on both himself and Chamunorwa Chingwe. Both Chingwe and Shava are members of Zimbabwe Lawyers for Human Rights (ZLHR), a member of the Forum. They were both assaulted by unknown assailants who were masquerading as clients that sought legal representation in July 2023.

All this comes amidst allegations that ZEC violated the Electoral Act by illegally printing the ballot papers without consulting the contesting parties. CCC had also requested that ZEC be ordered to provide applicants with the serial numbers of the ballot papers used in the postal ballot processes to verify that the total number of ballot papers printed does not exceed the 10% margin of the number of eligible voters, as required by the Electoral Act.

4.9 CCC files an urgent application demanding ZEC provide information on ballots printed for the elections

On 16 August CCC filed an urgent application through the Electoral Court seeking an order to compel ZEC to release information relating to printing of ballot papers. The application was filed by CCC through its secretary for elections, Ian Makone, where the party highlighted that it became aware of postal balloting processes by ZRP and that printing of ballot papers was already underway. In the application, CCC averred that as a political party, it was entitled to the information before the postal balloting exercise in terms of section 52A of the Electoral ACT [Chapter 2:13]. CCC is seeking that the court compels ZEC to release all the information relating to where and by whom ballot papers to be used in the elections were printed and the total number of ballot papers that have been printed so far. In the application, CCC further requests that ZEC provides details of the intended distribution of ballot papers to each polling station. Further, CCC is seeking the release of serial numbers by polling stations of the ballot papers to be distributed to each polling station. Lastly, the application also seeks to compel ZEC to adhere to and ensure that the total number of ballot papers printed does not exceed by more than ten per cent, the number of voters eligible to vote in the harmonized elections.

4.3 Allegations of command postal voting from ZRP in Kwekwe

Opposition parties including the CCC have raised alarm over allegations of command postal voting in Kwekwe. Police officers in Kwekwe were reportedly being forced to vote for the ruling party, ZANU-PF in the presence of their superiors. This came just a day after it was made public that ZEC had “secretly” allowed police officers to vote ahead of August 23 in the absence of political parties’ polling agents and also without sharing a sample ballot paper with contesting political parties. The Children of Zimbabwe War Veterans Association (COZWVA) on 15 August 2023 through their official Twitter page also raised alarm over alleged rigging at ZRP Rusape Headquarters. In the same fashion, as the incident reported in Kwekwe, allegations are that police officers were being forced to vote for ZANU-PF under the watch of their superiors with no observers or media to monitor the process.

4.4 Forty-two (42) CCC supporters were arrested for peacefully campaigning.

On 15 August 2023, not less than 40 opposition political party CCC supporters were arrested in Machipisa, Harare, for allegedly holding an unsanctioned car rally procession. Following their arrest, an appeal for sanitary wear for 22 female activists following the deplorable conditions the arrested persons are facing in detention. In a statement released on Tuesday, Zimbabwe Republic Police (ZRP) spokesperson Assistant Commissioner Paul Nyathi said the CCC public

event was held in violation of the Maintenance of Order and Peace Act (MOPA). According to the statement, the CCC convenor, Lawrence Materege notified the local Regulating Authority for Harare South of their rally set for Churu Farm on 15 August 2023 from 1000 hours to 1600 hours. The statement however indicated that the convenor and Gladmore Hakata decided to divert from the notified rally at Churu Farm and went on a car rally procession from the Glen View area into High Glen Road, Main Street, Machipisa Road into the Highfield suburb and stopped at the OK Machipisa traffic lights while openly blocking traffic.

4.5 Mwonzora denied permission to hold a peaceful demonstration

In a press statement dated 16 August 2023, MDC-T Acting Secretary for Information and Publicity, Aaron Makahamadze, communicated that the party's notification to demonstrate had been rejected. The party had given notification to conduct a peaceful demonstration on 9 August 2023. They intended to hold the demonstration on 17 August 2023 at Robert Mugabe Square. ZRP responded to the notification through a communication dated 12 August 2023 that the party had failed to comply with provisions of the Maintenance of Peace and Order Act. The statement by the party bemoaned the closure of the democratic space and infringement of the right to peacefully assemble as espoused in the Constitution.

4.6 Former Liberian President urges Zimbabwe to uphold the AU Charter on democratic elections

In a statement under her organisation, the Presidential Center for Women and Development, Former Liberian President Sirleaf Johnson has called for free and fair elections in Zimbabwe. In the spirit of adhering to the dictates of the African Charter on Democracy and Elections, she urged the protection of basic human rights such as freedom of expression, peaceful assembly and association. She further expressed that, in upholding the sanctity of the shared values of the AU, the Zimbabwe government should reconsider and review repressive laws and other measures that stifle the diverse voices of its people. Johnson, also highlighted that reported cases of political violence and human rights violations were not congruent with the ideals of the Charter and were in violation of the same. The statement also gave solidarity to the people of Zimbabwe and all Africans demanding electoral processes that are peaceful, transparent, inclusive and fair. She also urged authorities to protect the rights of citizens attending rallies as fair electoral processes hinged on citizens freely attending campaign gatherings and rallies without repercussions and fear for their well-being. She also expressed concerns over the minimal participation of women in this election and called on the government to ensure that women's voices were heard during the electoral process.

4.7 Electoral Observation Mission from SADC and the Commonwealth arrive in Zimbabwe

Both SADC and Commonwealth Observer missions arrived in Zimbabwe on 16 August 2023. They will be joining the EU Observer Mission that has already been in the country. The SADC mission will be led by former Zambian Vice President, Dr Nevers Mumba, whilst the Commonwealth mission will be led by Ms. Amina Mohammed who is the Chairperson and former Cabinet Secretary for Education and Foreign Affairs of Kenya.

4.8 43rd session of the SADC summit is underway in Angola

The 43rd Ordinary SADC Heads of State and Government Summit is currently underway in Luanda, Angola. The Summit is being conducted at a time when Zimbabwe is under the spotlight

as it is scheduled to conduct harmonised elections on 23 August 2023. The upcoming election has been marred by an escalation in incidents of politically motivated violence, the highest number of pre-electoral litigation recorded in the history of Zimbabwe elections and multiple electoral irregularities. Towards this end, the Forum in collaboration with other CSO's produced a position paper which speaks to emerging election-related issues such as political violence, selective application of the law, lawfare, and unfair coverage of political parties by the state media. Furthermore, the paper also speaks to the shrinking civic and democratic space in Zimbabwe that has negatively impacted the pre-election environment. The statement will be submitted to the SADC Secretariat at the end of the Summit.

5.0 Conclusion

The Forum remains highly concerned by reports of forced voting of police officers and accordingly urges the Zimbabwe Electoral Commission and senior officials within the Zimbabwe Republic Police to ensure that postal voting is undertaken in a constitutionally compliant manner. Furthermore, the Forum welcomes the SADC and Commonwealth observer missions who have now joined the EU Observer Mission in Zimbabwe. It is expected that these teams will be able to speak truth to power in the Zimbabwe elections based on their observations and also the stakeholder engagement processes they are undertaking.