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An Act of madness: Amendment of Criminal Procedure and Evidence Act

By Otto Saki

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The fighting of corruption in Zimbabwe has suddenly taken a new dimension with the gazetting of the Presidential Powers (Temporary Measures) Amendment of Criminal Procedure and Evidence Act. The laws of the country have been seen to be inadequate in as far as fighting economic crimes is concerned. Admittedly corruption is a cancer that needs to be curtailed through lawful means and needs the commitment of every citizen. Are we fighting corruption if we are creating such highly inept laws such as the recently gazetted [Statutory Instrument 37 of 2004](#)? Corruption cannot be fought in isolation with the protection of the rights of individuals, especially fundamental rights such as the presumption of innocence, which is the supporting tenet of our criminal justice delivery system. More so in view of our adversarial legal system. The 'Makamba Regulations' seem to have been motivated by dictatorial tendencies, which has been archetypal of laws that are a product of the Presidential Powers (Temporary Measures) Act.

The introduction of the Executive Presidency, gave our President sweeping powers to the extent of becoming a lawmaker unto himself. Talk of the principle of separation of powers! The act allows the President to pass legislation in the form of regulations if it seems inexpedient for the laws to go through the normal process of lawmaking. The President is empowered to pass regulations by publishing them in the Government Gazette. These regulations are in principle supposed to last for six months if they are not repealed. We are talking of six months of remand holding cells being full to the brim, police cells being crowded to the maximum, and more importantly rights of presumably innocent citizens being violated candidly and with the blessings of the courts which are presumed to be the custodians of our rights. One cannot challenge these provisions in the lower courts, as they do not have the jurisdiction to entertain constitutional matters. Lets try the Supreme Court, after all the law is clear that the Supreme Court has original jurisdiction in relation to violations of the Bill of Rights.

The act empowers the President to pass regulations when it appears to the him (President) that a situation has arisen or is likely to arise, which needs to be dealt with urgently in the interests of among other things economic interests of Zimbabwe or the general public interest. The issue of corruption, money laundering, externalising of foreign currency is not a new phenomenon to Zimbabwe and to claim that it has become of concern to the President overnight is difficult to believe. The president is very much aware that foreign currency has been externalised since time immemorial with the express or implied sanction of the government and its obvious participation in the very same schemes. To attempt to address the situation with such heavy handedness that violates the fundamental rights of the people is not only unfortunate but also deplorable. If the government is really serious about fighting corruption then everyone in its hierarchies should publicly declare all their investments and we will see if they will not be found wanting (*unotsvaga n'anga neinobata mai*). This act which empowers the President to make laws has been abused repeatedly especially in matters relating to fundamental rights of citizens.

You don't have to be a lawyer to ascertain that the regulations are patently and overtly unconstitutional. Section 13(1)(e) of the Constitution of Zimbabwe provides that one may be deprived of the right to liberty upon reasonable suspicion of him having committed, or being about to commit a criminal offence. There must be *prima facie* grounds of arresting that person. What this piece of obnoxious legislation has done is to legalise the heretical theory of "arrest and investigate later", which had already become characteristic of the police save that it lacked statutory and judicial sanction. To arrest someone is to deprive him of the right to personal liberty without which many rights can be easily violated such as subjection to cruel inhuman and degrading treatment. Every individual should be afforded the right to protection before the law as provided for under section 18 of the Bill of Rights of our Constitution.

The bad governance style is responsible for the corruption that we are facing today in Zimbabwe. It is only the authoritarian and despotic regimes that have been on record of having high corruption rates in the world. In a country where the executive has all the power to make law, to declare war or peace, to commit soldiers in foreign wars, where a few individuals involved in diamond and gold dealings only enjoy the profits of that war. Hundreds of soldiers were declared missing under and their last known address was either the Commando Barracks or King George VI Barracks. What ate those men? Corrupt tendencies, period!

In a situation of normalcy, laws are never applied retrospectively but with the 'Makamba Regulations', anything is possible. Every individual who is arrested on allegations of having committed any offence is supposed to be brought for trial within a reasonable period and 7 days or 21 days will never fall in the reasonable period regardless of who is the 'reasonable man'. Reasonable period does not only apply in respect of the commencement of trial but also a reasonable time for its conduct and

completion. With this regulation this will only remain an academic argument, which has no practical application. The right to appeal to any court of higher jurisdiction is available to every individual who will be aggrieved by the decision of the lower court. Bail applications and appeals will not be granted in circumstances where the court feels that to grant one bail will jeopardise investigations or one is likely to abscond. This decision will be reached after considering the interest of all parties and the law is interpreted in favour of liberty. To deny one bail on unfounded charges that might be even clear to the court is unlawful and a total manifestation of a confused legal system.

The police have effectively been given wide powers to arrest without reasonable suspicion and to detain suspects in custody until they have completed their investigations. The police will effectively be the arresting detail, the prosecution will be rendered useless, the magistrate and the judge will not have a say in the bail application. The accused to buy his freedom will have to bribe his way out. Another hybrid of corruption is being born from this low attempt to deal with corruption.

To cite Professor Kim in his book on Public Administration, commenting on corruption in South Korea under President Jun's administration wrote:

"Jun's regime in the 5th Republic of Korea was similar to military dictatorship-abuse of political and bureaucratic power. Military men were placed in charge of the police, ruling party, the intelligence network and planning. Hundreds of retired army officers were given political and administrative positions such as ambassadors, mayors and major positions in central government. This indicates that there was a formal government and then there was an "informal government" that really controlled things"

Every Zimbabwean is called upon to reflect upon these statements in light of the recent laws that have been enacted and the ruffling of the old-new cabinet's feathers. Other than violating our own supreme law of the land, the regulations are repugnant to the Conventions that Zimbabwe ratified and accented.

I call upon all members of the legal fraternity to register their displeasure of these provisions and challenge the relevant ministry. These regulations speak volumes about the short sightedness of the old-new cabinet. It is unfair to expect something better from these men. Our rights and the rights of accused persons should never be traded for empty and mentally warped political agendas. We encourage the government of Zimbabwe to fight corruption whilst respecting the rights of its citizens regardless of the extent of the 'grand evidence' they have or do not have against the accused.

Otto Saki is a Projects Lawyer with the Zimbabwe Lawyers For Human Rights

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