



Harare, 15 May 2015

Official Launch of the project 'Consolidating Judicial Reforms in Zimbabwe'

Intervention by

**Philippe Van Damme, Ambassador,
Head of EU Delegation to Zimbabwe**

Venue: Constitutional Court, Harare



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Vice President of the Republic of Zimbabwe, Minister of Justice, Legal and Parliamentary Affairs, **Hon. Emmerson Mnangagwa**,

Minister of Finance and Economic Development, Hon. Patrick Chinamasa

Chief Justice of Zimbabwe and Chairperson of the Judicial Services Commission and the Judicial College of Zimbabwe, **Hon. Godfrey Chidyausiku**,

The Prosecutor General, **Hon. Johannes Tomana**

The Attorney General of the Republic of Zimbabwe, **Hon. Advocate Prince Machaya**,

The Ambassadors of European Union Members States here present,

The Secretary in the Ministry of Justice, Legal and Parliamentary Affairs, **Ms Virginia Mabiza**,

The Acting Secretary of the Judicial Services Commission, Hon. Justice **Rita Makarau**,

The Commissioner of the International Commission of Jurists, Retired Justice **Moses Chinhengo**,

Senior Officials, Judges, Members of the Legal Fraternity here present,

The secretariats for the Judicial Services Commission and International Commission of Jurists,

Ladies and Gentleman,

The Constitution adopted in 2013 contains an expansive Bill of Rights that recognises and guarantees fundamental human rights - economic, social, cultural - as well as civil and political rights. It also specifically recognises and guarantees the right to a safe and secure environment. It is a constitution that reinforces the universality of human rights as well as their interrelatedness and interdependence. These are rights that are at the centre of preserving human dignity for the people of Zimbabwe.

In respect of the principle of separation of powers, the Constitution vest judicial authority in the **Courts**. The wording is interesting. Section 162 of the Constitution reads “*Judicial authority derives from the people of Zimbabwe and*

is vested in the courts". Section 164 states that "*the courts are **independent** and are subject only to this Constitution and the law, which they must apply impartially, expeditiously and without fear, favour or prejudice*", convinced that "*the independence, impartiality and effectiveness of the courts are central to the rule of law and democratic governance*".

The constitution also provides for the existence of a **Judicial Service Commission** as an independent constitutional Commission. This Commission is mandated according to section 190 of the Constitution to "*promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice in Zimbabwe*". The success of the judiciary in Zimbabwe in rendering efficient and quality justice as a service to the people of the country will depend largely on the capacity of the Commission to discharge its mandate. It is a critical responsibility.

An independent prosecutorial service is a necessary and central element of any efficient criminal justice delivery service in any given country. Zimbabwe's new Constitution also establishes, for the first time in the country's history, a **National Prosecuting Authority** which, following sections 260-261 of the Constitution, "*is independent and is not subject to the direction or control of anyone*", but "*must act in accordance with this Constitution and the law*" and may in no case "*violate the fundamental rights or freedoms of any person*".

In a more general way, as stated very clearly in chapter one, section 2 of the Constitution on the founding provisions, "***this Constitution is the supreme law of Zimbabwe** and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency*", and "*the obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them*".

This is very important. It imposes a duty on branches of government to function in a way that guarantees, promotes and protects the constitution and makes it a living document with a meaning/reality to the people of Zimbabwe.

The constitution therefore provides under its chapter 4 on the Declaration of Rights, that every person has a **right to administrative justice and the right to a fair hearing** before an independent and impartial tribunal and to be represented by a legal practitioner before any court (sections 68-69 of the

Constitution), as courageously reminded this week by the High Court in the Telecel case this week.

Above all, the constitution provides for independent courts and institutions that should guarantee the right to fair trial and administration of justice.

The provisions of the constitution of Zimbabwe outlined above are consistent with Zimbabwe's international human rights law obligations in terms of the instruments that Zimbabwe has signed and ratified such as the **UN Covenant of Economic Social and Cultural Rights**, the **UN Covenant on Civil and Political Rights** and the **African Charter on Human and Peoples Rights**. All these are essential human rights instruments to be implemented for societies to function properly.

Overall, the new constitution's provisions offer a wide range of opportunities for the EU to consolidate its partnership with Zimbabwe in the area of access to justice and for greater legal protection of human rights.

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Honourable Vice-President, Ladies and Gentlemen,

I should have warned you, and some among you already know it, although not a lawyer myself, I come from a family of lawyers, and although I betrayed the family tradition by becoming an economist, I kept a deep rooted respect for the law profession and a fascination for Constitutional law because Constitutional law is the foundation on which to build the societal house in which people can prosper as proud citizens, protected by their Constitutional rights and freedoms. All EU support to Zimbabwe has the **Constitution as reference** and **the respect for the rule of law** as founding principle.

By signing the "National Indicative Programme" under the 11th European Development Fund on 16 February 2015, the Republic of Zimbabwe and the EU agreed to retain as one of the three sectors of concentration of the EU's cooperation with Zimbabwe over the next years the "institutional strengthening, fostering good governance in order to contribute to Zimbabwe's economic recovery, and to the consolidation of the democratic process, as well as peace and stability". Within this framework priority has been given to (i) strengthening

the judiciary, (ii) strengthening the legislative authority, (iii) enhancing the public finance management framework of the executive and the related parastatals, and (iv), to make the three previous objectives possible in a consistent way, supporting the Constitutional alignment of all existing laws and the drafting of new laws where necessary, respecting the fundamental human rights and freedoms.

In recent weeks, we already launched some projects that I see as mutually reinforcing and complementary in supporting Zimbabwe to ensure that the Constitution is fully implemented to guarantee all rights (and obligations) of Zimbabwe's people and respect for the rule of law. I'm referring to the programme in support to the Government in its efforts to **align legislation to the 2013 Constitution**, a programme implemented in collaboration with the *Centre for Applied Legal Research*, and the **support programme to the Parliament**, launched last week, and implemented through UNDP and the *Southern African Parliamentary Support Trust*.

It is in this framework that we are launching this project today.

Today's **1,2 million Euros** project builds on previous interventions and aims at supporting strategic duty bearers to carry out their mandate and in doing so, transforming Zimbabwe from a country that has a good Constitution, to one that effectively and consistently implements **the principle of constitutionalism**. Those duty bearers and primary beneficiaries of this project are here present: the **Judicial Service Commission**, the Ministry of Justice, Legal and Parliamentary Affairs through the **Judicial College of Zimbabwe**, the **National Prosecuting Authority**, the **Law Society of Zimbabwe** as well as the **University of Zimbabwe Law School**.

With this new intervention, and thanks to the **International Commission of Jurists**, without which none of this would have been possible, we are aiming at increasing the capacity of the legal professionals to administer justice fairly and in accordance with international human rights law. We also intend to contribute to a more effective, accessible, and credible judicial system through provision of targeted support to key actors allowing them to continue operating independently and impartially from any interference as well as to adopt measures that guarantee continuous improvement of quality in justice delivery.

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Honourable Vice-President, Ladies and Gentlemen,

Past collaboration between the EU and the Judiciary as well as results achieved so far, have demonstrated the importance of constructive and sustained engagement.

Since 2009, the EU has supported consistently the judiciary and the legal profession in Zimbabwe to strengthen the justice delivery system. It has translated into significant outcomes, including:

- The development and implementation of a strategic plan for the Judicial Service Commission,
- A greater efficiency in justice administration that has resulted in a substantial reduction of case backlogs,
- The gradual refocusing of justice administration from a quantitative approach (i.e. number of cases dealt with) to a more qualitative one,

But as we already said, the Constitution has to become a living document with a meaning/reality to the people of Zimbabwe. Unfortunately we have observed cases of **contempt of court** recently, but the judiciary has also delivered extremely important and progressive judgments on a number of issues such as dual citizenship in the **Madzimbamuto** case. We hope this case will inform case law, and open the way for the confirmation of the primacy of the Constitution, for Constitutionalism.

With the project we are about to launch today, the EU is strengthening its engagement with the judiciary, but more is to come. In preparation of a much larger, **sector-wide** support programme under the 11th EDF, a scoping study will be launched over the next weeks. This identification mission will involve a broad consultation of all concerned stakeholders in the sector. So we will definitely have other opportunities to meet and engage again with the legal fraternity!

THANK YOU VERY MUCH FOR YOUR ATTENTION